VOL. X.

94377

# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

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Term No. [redacted]267

CHARLES D. NEWTON, AS ATTORNEY GENERAL OF THE STATE OF NEW YORK, EDWARD SWANN, AS DISTRICT ATTORNEY OF THE COUNTY OF NEW YORK AND LEWIS NIXON, CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, FIRST DISTRICT, APPELLANTS,

vs.

CONSOLIDATED GAS COMPANY OF NEW YORK, RESPONDENT.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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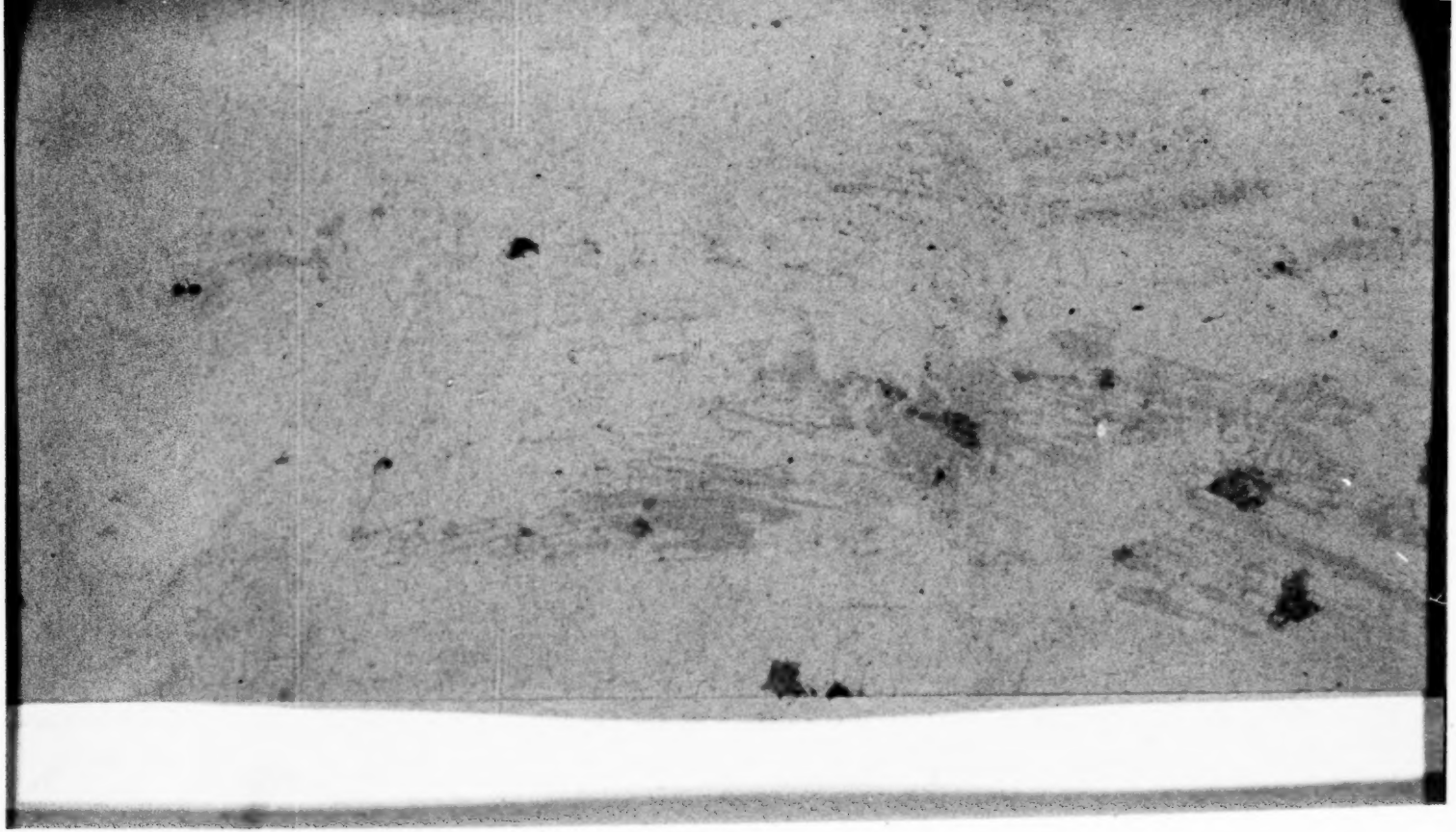
FILED MARCH 17, 1921

(File No. 28164.)



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CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 23683

Before: ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 3, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. O'BRIEN, of Counsel for defendant 23684
Swann.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission.

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HERBERT W. ALDRICH resumes the stand.

DIRECT-EXAMINATION CONTINUED BY MR. RANSOM:

Q. Do you recall the question that was asked you at the close of the session yesterday?

Mr. Chambers: Have you any maps now covering these pieces of property? 23685

Mr. Ransom: No.

Mr. Chambers: Are you going to have any?

Mr. Ransom: Property not now used? No.

Mr. Chambers: You are proving it was used at some time or other.

Mr. Ransom: The maps do not prove it.

Mr. Chambers: Are these pieces of property covered by your deeds?

Mr. Ransom: Yes.

Mr. Chambers: All of them?

Mr. Ransom: I think not, no.

Mr. Chambers: I think, if the Master please, they should give us diagrams of these pieces of property, with the dimensions, so when we prove our rate base we will know what they are and the dimensions of them and so that we can also cross-examine. It seems as though they ought to give us that.

Q. What is the answer to the question?

Mr. Chambers: Now, there is nothing in the record at all to show—

23687 The Master: I do not see how it is important.

Mr. Ransom: Your Honor will remember how utterly inconsistent the representative of the Attorney General is. I offered in evidence a diagram of these properties and, on the objection of Mr. Chambers, it was excluded and the objection sustained.

The Master: I do not see how it is important. The operating records for certain years show that taxes were paid on certain properties for certain years; that afterward there were—

Mr. Chambers: Because they were used, I suppose.

23688

The Master: Yes.

Mr. Chambers: How are you going to fix the rate base for 1912, for instance?

The Master: I am not going to fix a rate base for 1912.

Mr. Chambers: Just 1918?

The Master: It will be 1918 or 1919, or both. I am not going to fix any rate on 1912. All that I understand this is for is to show the basis of the adjustments, tax adjustments made by Mr. Teele. That is all.

Mr. Chambers: Of course I look at it in a different light, your Honor.

The Master: Answer the question that was unanswered last night.

Q. Will you give the location of that portion of Lot 7 in Block 1092 not printed in pink on Exhibit 178, Sheet 7, Lot 1 of the same block, Lot 1 in Block 1093, that portion of Lot 9 of Block 1093 shown not printed in pink on Exhibit 178, and Lots 23 and 28 of Block 1107?

A. The portion of Lot 7 in Block 1092 not tinted in pink on Exhibit 178, Sheet 7, lies westwardly from 23690
the tinted portion and extends about 200 feet west of the tinted portion.

Mr. Chambers: Wait just a minute. What piece of property is that? I could not hear it.

The Witness: Sheet 7.

Mr. Chambers: Of Exhibit 178?

The Witness: Yes.

Mr. Chambers: What did you say about it?

The Witness: I have described the portion of Lot 7 not tinted on Sheet 7 as extending about 200 feet westwardly from the portion already shown tinted.

Lot 1 of the same block is the area extending 23691
from the portion of Block 7 just described, to the easterly side of Twelfth Avenue, as laid out on the city plan. Lot 1 in Block 1093 is the portion of land extending westwardly from Lot 9, as shown—

Mr. Chambers: I object to this. I do not know what he is doing, what he is describing or what he is trying not to describe. I do not see any use of wandering on, and I move to strike it out.

The Master: I will allow it.

Mr. Chambers: Exception.

The Master: Go ahead, Mr. Aldrich.

The Witness: Lot 1 in Block 1093 is the portion of that block extending westwardly from Lot 9, as shown on Sheet 7 of Exhibit 178, to the easterly side of 12th Avenue as laid out.

Lot 23 of Block 1107 is the land westwardly from the westerly side of 12th Avenue as laid out, including the bulkhead and the land under water which was the property of the complainant.

23693 Lot 28 of Block 1107 is the similar wharf property in the upper block between 45th and 46th Streets.

Q. During what period, if any, after December 31, 1905, was this property used by the complainant?

A. Up to August 1, 1913.

Q. What buildings or improvements were on the property during that period, and what use of the land and improvements was made by the complainant company during that period?

A. Upon the lots just described was the larger part of the West 44th Street Water Gas Plant of the
23694 complainant company, and it was in use in the manufacture of gas until the date I have given.

Q. Was it covered with the buildings, structures and apparatus of that plant?

A. The buildings, structures, apparatus, works connections below the surface of the ground; the coal unloading machinery on the bulkhead.

Q. Lots 23 and 28 of Block 1107 were the two bulkhead properties?

A. The bulkhead properties, in addition to a strip of land about eighty-five feet wide, in each block that was east of the bulkhead.

Q. The first bulkhead from 44th to 45th Streets, and the second from 45th to 46th Streets?

A. Correct.

Q. What happened to the property on August 1, 1913, the date you have mentioned?

A. It was taken by the City of New York in a condemnation proceeding for the improvement of the North River waterfront.

Q. Did the complainant company own any property in Block 2175 subsequent to December 31, 1905?

A. They did.

Q. What was the property known as? 23696

A. The Inwood station.

Q. Where was it located?

A. It is on the east side of Broadway, above Sherman Avenue; that is back of Fort George Hill.

Q. During what period, if any, subsequent to December 31, 1905, was the Inwood station used by the complainant company?

A. Until July 30, 1912.

Q. What buildings or improvements were on the property during that period, and what use of the land and improvements was made by the complainant company?

A. It was occupied by a boiler and governor house, 23697
and by a gas storage holder, and was in use as a holder station for distributing gas in that vicinity.

Q. A small storage holder?

A. A small storage holder, yes.

Q. What happened to the property on July 30, 1912, the date you have mentioned?

A. Upon the Kingbridge station being completed and put into service, the use of this property was discontinued.

Q. Will you describe Lot 17 in Block 689. Where is it located?

A. Block 689 was the entire block between West 17th and West 18th Streets, extending from 10th to 11th Avenues before the Chelsea improvement. Lot 17 is that portion of the block that remained in the ownership of the complainant company after that condemnation proceeding.

Q. During what period subsequent to December 31, 1905, was Lot 17 in Block 689 used by the complainant company?

A. Up to January 1, 1914.

Q. During that period what buildings or improve-
23699 ments were on that land, and what use of the land and improvements was made by the complainant company?

A. Upon the land there was a two-story office building, laboratory and experimental gas plant. The office building was used as the headquarters of the 18th Street distributing station and the laboratory was used for experimental and research purposes, and the experimental gas plant was used for testing coal. All of those departments were in that one building. Along the easterly end of the block, along 10th Avenue from 17th to 18th Streets, was a large purifier house which was used in part for photographic purposes
23700 and in part for the storage of patterns—that is, patterns such as used in making castings, large castings—and for other storage purposes. There was also an engine and a boiler house, and adjacent to the engine and boiler house was a two-story workshop. The boiler furnished steam for running the machinery in the work shop and for the operation of the exhauster and engine in Block 690.

Q. That is the 18th Street distributing holder?

A. Yes. The work shop was occupied by a blacksmith shop and machine shop, carpenter shop and a pipe shop, and in that shop the company built and

rebuilt its wagons and the tool carts such as are seen used by our Department of Mains and Services in the street. There was also a one-story brick scale house with an outdoor platform scale on the property.

Q. And part of the 18th Street plant having been taken by the city in condemnation, this remainder was used as stated, and then disposed of?

A. It was.

Q. Where is Lot 12 in Block 690 located?

A. Block 690 is the block from West 18th to West 19th Street extending from the west side of Tenth 23702
Avenue to the Marginal Street. Lot 12 was the full width of the block on Tenth Avenue, to a depth of 100 feet, and then the southerly side of the block clear down to the Marginal Street.

Q. During what period after December 31, 1905, was this property used by the complainant company?

A. Up to January 1, 1915.

Q. And during that period what buildings and improvements were on this property, and what use of the land and improvements was made by the complainant company?

A. On the portion of the lot extending across the block, along Tenth Avenue, there were two gas stor- 23703
age holders enclosed by a high brick fence wall. In the rear of the gas holders was a brick boiler house, and separate from it was a brick governor and exhauster house. In the boiler house there was an horizontal boiler and in the exhauster and governor house there was an engine driving an exhauster, and an equipment of piping and gas valves used in distributing the gas in that district. Westwardly from that portion of the block was an area used by the company for storing shoring timbers and pipe and building materials and bulky substances.

Q. What happened to this property on January 1, 1915?

A. Its use for such purposes was discontinued by the company.

Q. Where is Lot 11 of Block 691 located?

A. Block 691 is the block between West 19th and West 20th Streets, extending from Tenth Avenue to the Marginal Street. Lot 11 is that portion at the westerly end of the block, which is the property of the Consolidated Gas Company.

Q. During what period after December 31, 1905,
23705 was this property used by the complainant company?

A. Up to January 1, 1910.

Q. During that period what buildings or improvements were on the land, and what use of the land and improvements was made by the complainant company?

A. On that site there were two gas storage holders, a frame boiler house with a boiler, and two small valve houses, in which were the valves controlling the gas going in and out of the holders just described. It was used as a part of the 18th Street gas distributing station.

Q. The property was enclosed by fences?

23706 A. It was.

Q. What happened to the property on January 1, 1910?

A. Its use as a part of the 18th Street distributing station was discontinued.

Q. That is, the two gas holders were no longer used as such?

A. No longer used.

Q. Where is Lot 14 of Block 716 located?

A. Block 716 is the block between West 18th, West 19th, and Ninth and Tenth Avenues. Lot 14 is a lot 75 feet wide just about midway between the two avenues.

23707

Q. During what period after December 31, 1905, was this property on Lot 14, Block 716, used by the complainant company?

A. Up to January 1, 1914.

Q. During that period what buildings or improvements were on that property, and what use of the land and improvements was made by the complainant company?

A. There was on the property a brick fence across the front, a two-story brick dwelling house in which lived the man in charge of the property, and on the east side was a two-story brick building, and on the 23708
west side was a one-story building, partly frame and partly brick. There was in this last described building a steam heating plant, small steam heating plant, and an underground gasolene storage tank with a pumping equipment. The property was used as garage of the complainant company.

Q. That is, there was a one-story garage?

A. One-story building, in which some automobiles were kept, and a two-story brick building on the easterly side where there were automobiles kept also, and one or two horses in the south end.

Q. The building was originally a stable?

A. The building was originally a stable and was 23709
afterwards converted into use as a garage.

Q. And up to January 1, 1914, was the company's principal garage?

A. It was.

Q. What happened to the property on that date?

A. Its use was discontinued as a garage.

Q. Where is Lot 5, Block 1070 located?

A. Block 1070 is the block between West 41st, West 42nd Streets, Tenth and Eleventh Avenues. Lot 5 is on the north side of 41st Street in said block about 200 feet east of Eleventh Avenue.

Q. During what period after December 31, 1905, was this property used by the complainant company?

A. Up to July 10, 1917.

Q. When it was sold?

A. It was sold.

Q. During that period what buildings or improvements were on the property and what use of the land and improvements was made by the complainant company?

A. On the west side of the lot there was a large brick stable building, and on the property east of that
23711 there were three other brick buildings, smaller, that were used as a blacksmith shop for shoeing the horses of the complainant company which were kept in the stable, and also making some minor repairs to wagons. One building was used for office purposes, and the remaining building was used for the storage of hay and feed.

Q. There were four brick buildings in all on the property?

A. There were.

Q. Where is Lot 1 in Block 1704 located?

A. Block 1704 is the block between East 110th, East 111th Streets, extending from First Avenue to
23712 Pleasant Avenue. Lot 1 is the westerly one hundred and seven feet of that block.

Q. During what period after December 31, 1905, was this property used by the complainant company?

A. Up to June 26, 1912.

Q. During that period what buildings or improvements were on that land and what use of the land and improvements was made by the complainant company?

A. Up to that date that land was the headquarters of the uptown district of the complainant's department of mains and services. There was a two-story

brick office building which was the district superintendent's office. His staff of clerks were there. The district emergency wagon was housed there in a building built for the purpose, and then there were buildings for the storage of pig lead, and large cast iron pipe and fittings, and small wrought iron pipe and fittings. The property was enclosed by a brick fence.

Q. What happened to the property on June 26, 1912, the date you have mentioned?

A. It was sold to the Standard Gas Light Company.

Q. Did you know Frederick J. Mayer? 23714

A. I did.

Q. Is he still living?

A. He is not.

Q. Did you attend his funeral?

A. I did.

Q. When?

A. On the 4th of September, 1912.

Q. Did you at that time see his dead body?

A. I did.

Q. And you recognized it as that of Frederick J. Mayer?

A. I did.

Q. Mr. Aldrich, were you familiar with the property inventoried by Mr. Mayer in the prior suit, and the testimony which he gave concerning it? 23715

A. I was and am.

Mr. O'Brien: May I ask at this time, on the question of the death of Mr. Mayer, whether you will put us to the trouble of producing the death certificate or giving exact proof as to the death of other witnesses in this suit.

Mr. Ransom: I have raised no technicalities in this case and shall not. Any witness in the prior suit whom you say is dead, and my investiga-

tion satisfies me to that effect, I shall raise no technical question, and I assume that the defendants in this case raise no technical question as to the death of Mr. Mayer or Mr. Simpson.

The Master: There is no question of their death, it has been testified to. But I gather from what Mr. O'Brien says that he may not be able to get a witness to testify—

Mr. O'Brien: Where one may have died out of town or several, I would like to know now as a matter of convenience.

23717 The Master: You had better tell the other side who, you say, is dead.

Mr. Ransom: Whom do you mean?

Mr. O'Brien: I have not covered the whole record as yet.

The Master: You cannot expect to come into court and say that Mr. Jones is dead and have the other side admit it. You will have to tell them in advance about it.

Mr. Ransom: I know that several of the witnesses who testified in the other suit are dead. Whether I know of the death of all the witnesses in prior suit I do not know. Tell us whom you

23718 mean.

Mr. O'Brien: One is Mr. Marks.

The Master: That can be very nicely discussed in the hall during recess. Let us proceed.

Q. Is all of the property inventoried by Mr. Mayer in the prior suit now in existence and in use?

Mr. Chambers: I object to that as incompetent and irrelevant and immaterial.

The Master: He says he knows the property that Mr. Mayer testified about. He is now asked if it is still in existence.

Q. Is it in existence and in use?

The Master: What specific objection is there to that?

Mr. Chambers: On the ground that Mayer's testimony is incompetent?

The Master: Mayer's testimony is incompetent?

Mr. Chambers: Yes. He cannot cure the defect now by asking this witness about property that Mayer inventoried.

The Master: Suppose Mayer's testimony is competent, would there be any objection to this witness saying that the property described by Mr. 23719
Mayer is still in existence and in use?

Mr. Chambers: I think so.

The Master: On what theory?

Mr. Chambers: I think Aldrich had better describe the property that he says he knows is in use.

The Master: Objection overruled.

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial in that it is too general and vague; in that the testimony of the witness Mayer was erroneously allowed to be read into the record; in that the testimony of the witness Mayer was based upon information that 23721
was handed to him and not from actual inventory made by him; and on the ground that a general statement like this, without specifying properties that he says are there, is too vague and general to be admitted.

I object on the further ground that the witness has already been called on the direct to testify as to what is used and usable and useful, that his testimony was supposed to have been completed at that time, and on that testimony we proceeded to prepare our case.

Mr. Chambers: Yes, and we have to prepare it all over now.

Mr. O'Brien: I object on the further ground that up to the present time the complainant has not provided us with an inventory as directed by District Judge Mayer on May 16, 1919; that the complainant has not complied with the Master's directions given at the occasion of our visit to the offices of the complainant company; that we are still without the inventory, and that this "short circuit" testimony is not proper in a proceeding of this kind.

23723

The Master: Objection overruled.

Mr. O'Brien: Exception.

The Master: Is the property described by Mayer still in existence and use?

The Witness: The property inventoried?

Q. The property inventoried and appraised by Mayer?

A. The property inventoried and appraised by Mayer is in existence today and available for use except as far as—

The Master: That is not the question. The question is, is it in existence and in use. You were not asked whether it was available for use.

23724

The Witness: It is.

The Master: It is in use?

The Witness: It is except as far as any of it may be upon land not shown tinted on Exhibit 178—

Mr. O'Brien: There it is, *res ipsa loquitur*.

Mr. Chambers: I move to strike that out.

Mr. Ransom: Let us hear the answer.

The Witness: Except as far as it may be shown by Mr. Teele's exhibit of withdrawals to have been withdrawn.

Q. Exhibit 367?

The Master: That kind of testimony is no good.

Q. Are you familiar with all the withdrawals that have taken place since the time of the Mayer appraisal?

Mr. Chambers: I think we should have the answer stricken out.

The Master: No, I will let it stay. It means nothing. It means that it is all there except what has been taken away.

Q. Are you familiar with all the withdrawals of 23726
property from use that have taken place since the time of the Mayer appraisal?

A. I am.

Q. Are you familiar with the schedules of withdrawals prepared by Mr. Teele, Exhibit 367?

A. I am familiar with Mr. Teele's exhibit of withdrawals, yes.

Q. Are you familiar also with Exhibit 185, schedule of additions from December 31, 1905, to December 31, 1918?

A. I am.

Q. Concerning which you were interrogated when you were on the stand before? 23727

A. I am.

Q. Is the property shown on Exhibit 185, schedule of additions during that period, still in existence and in use.

Mr. O'Brien: If your Honor please, this kind of testimony will not help, but will confuse. It means taking up the time of the Court, it means endless testimony unless the witness will state when these things were withdrawn. We won't ask about a pick or shovel or hoe, but as to any substantial piece of property it is necessary to

know when it began its life and when it ended. This generalization will confuse the record.

Mr. Ransom: Here is a man who passes on withdrawals.

Mr. O'Brien: General statements have been offered here, the capsule testimony previously offered—it will only just make a comedy of errors out of this case.

The Master: The witness has got to answer that is all there except what has been subsequently withdrawn, because the proof is that
23729 many things that were added has since been withdrawn.

Mr. Ransom: That has all been scheduled.

The Master: I don't think this is a good way of proving it.

Mr. Ransom: I think it is an adequate way of proving it, or it is one way of proving it. The books of course show the additions and withdrawals. We have the testimony from that viewpoint.

The Master: I will let you ask Mr. Aldrich—

Mr. O'Brien: May I make a suggestion at this time? Wouldn't it be the fair, candid way to
23730 give us an inventory, a fair inventory, and let us check it up? It removes so much of controversy in the case.

The Master: That inventory we passed several months ago.

Mr. Ransom: They have had an inventory for months.

The Master: I will let you ask this witness whether he collaborated with Mr. Teele in the preparation of these exhibits, whether he gave him information, whether he has seen these exhibits, whether he has checked up the items on

these exhibits. If he has let him say that he knows the property added since the date set forth in the exhibit, I will let him say that the property withdrawn is, to his knowledge, set forth on that exhibit.

Mr. O'Brien: May I call your Honor's attention at this time to the statement made by Mr. Teele, that all he knows is what the books show, that he had just made a transcript from the books.

The Master: But Mr. Aldrich claims to know more than that. I will let him answer and give 23732
you an exception.

Mr. O'Brien: I object to the form of the inquiry as outlined by the Master, and note an exception to its being allowed.

Q. In the course of your duties, as you have testified, you have been familiar with additions to property of the company from December 21, 1905, to the present time?

A. I have been.

Q. And in the course of your duties, likewise, have you become familiar with the details of those additions as set forth in Exhibit 185, concerning which you were interrogated when you were on the stand 23733
before?

A. I have.

Q. To your knowledge, does Exhibit 185 correctly set forth the additions to manufacturing plant and equipment from January 1, 1906, to December 31, 1918?

A. It does.

By the Master:

Q. How do you know.

A. From my knowledge of the construction account.

23734 Herbert W. Aldrich, Direct.

Q. What did you have to do with that exhibit to know what was in it?

A. I checked it up when it was made.

Q. Did you help make it up?

A. I did; I helped to identify items and as Mr. Teele went over the vouchers and accounting material, I identified items for him so far as he needed such assistance.

Q. Have you checked up every item?

A. Every item.

Q. In Schedule 185?

23735 A. Every item in Schedule 185.

Q. And you say that every item set forth therein is accurately set forth?

A. It is.

Mr. O'Brien: What do you mean by checking up?

The Master: I won't let you ask any questions at this time.

Mr. O'Brien: But don't you see, your Honor, where you put him through a cross-examination—

The Master: I see a lot of things.

Mr. O'Brien: And address questions to him

23736 and we are not allowed to, that the record is made faulty?

By Mr. Ransom:

Q. The Exhibit 367, manufacturing plant and equipment withdrawn from service January 1, 1906, to December 31, 1918, in the course of your duties as you have testified, you have been familiar from time to time with the withdrawals of property from service?

A. I am familiar with them, yes.

Q. And with respect to Exhibit 367, have you been familiar with its contents?

A. I am.

Q. And were you consulted about the identification of the items of property shown thereon to have been withdrawn?

A. I was.

Q. And so far as property inventoried and appraised by Mr. Mayer in the prior proceeding, does Exhibit 367, to your knowledge, correctly set forth the withdrawal from manufacturing plant and equipment during that time?

A. It does.

The Master: Did you check up every item on 367? 23738

The Witness: I did, even checking the totals on an adding machine.

Mr. O'Brien: Oh, you did the work for Mr. Teele, did you?

The Master: Stop it, will you?

Mr. O'Brien: Why shouldn't I make a comment?

The Master: Because I won't let you until it comes your time for cross-examination.

Q. And does this Exhibit 367, to your knowledge, also show correctly the withdrawals of manufacturing plant and equipment from service that were added subsequent to December 31, 1905? 23739

A. It does.

The Master: Does it show all the withdrawals, to your knowledge?

The Witness: It does.

The Master: Accurately?

The Witness: It does.

Q. Now, except as to items shown in Exhibit 367 as having been withdrawn from service, is all of the property shown on Exhibit 185 still in existence and in use?

A. It is.

The Master: Is all of the Mayer property that he appraised still in use except as shown to have been withdrawn by Exhibit 367?

Mr. O'Brien: Same objection that I made before, your Honor, and exception.

The Witness: Or except so far as it may be upon land not shown tinted in pink in Exhibit 178.

The Master: Wouldn't that be reflected in Exhibit 367 as property withdrawn.

The Witness: Not in the case of 44th Street
23741 station, the portion condemned.

Mr. O'Brien: I move at this time to strike out that question and answer where you asked him if one of the exhibits here correctly set forth the withdrawals, and note an exception to your ruling.

The Master: Motion denied.

Q. Now, Mr. Aldrich, with respect to the property shown in Exhibit 178, and with respect to your testimony yesterday and today, with respect to the property used at various times from December 31, 1905, to the present time, except as you have otherwise testified, has all of this property on Exhibit 178 been
23742 used by the company from December 31, 1905, to the present time?

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial.

Mr. Chambers: He has been over it and over it and over it.

Mr. O'Brien: The use of the words is very inappropriate, "with the exception of so on and so forth have been used."

Mr. Chambers: He told us all he knows about Exhibit 178 on direct and cross.

Mr. Ransom: Only as to 1918 and 1919.

The Master: All of his questions were directed to the time 1918 and 1919. Now he is asking him to go back to 1905.

Mr. Ransom: As to the ones he did not specifically testify.

Mr. Chambers: I think he ought to tell which piece of property, what was on it and how it was used.

The Master: I won't let him tell it now, and I won't let you ask it on cross-examination and spend three weeks to do it.

Mr. Chambers: I think you ought to give us 23644
a chance to cross-examine this man now.

The Master: I will, a useful cross-examination.

Mr. O'Brien: Your Honor, I object to the question as—

Mr. Chambers: That is simply because we are going to claim some of it goes out.

Mr. Ransom: This information has been furnished only because the defendants asked for it.

The Master: Is this property, except as it has been withdrawn from use since 1905, the property on 178?

Mr. O'Brien: I object to the question as incom- 23745
petent, irrelevant and immaterial, as too vague, in the face of the testimony already given, showing that properties were used and then turned away or abandoned or withdrawn from service, that unless you give the dates, unless you give the years, unless you specify to some extent the term or ask the witness to give the term or ask the witness to give the term of use, the question is altogether too general and vague to be anything but confusing in the record in this case.

The Master: Ask your question.

Mr. O'Brien: Exception.

The Master: I will withdraw my question. Ask your question.

Q. Except as you have testified yesterday and today with respect to specific parcels, has all of the property in Exhibit 178 been used by the complainant company as you previously testified from December 31, 1905, to the present time?

Mr. O'Brien: I object to that as a blanket question, confusing in form, tending to merely
23747 confuse the record. Your Honor, there is nothing specific about it. It is negative in form, and I think this thing ought to be thoroughly done if it is going to be done at all. If the witness's testimony is being offered in lieu of an inventory, then we ought to have it specific.

The Master: Objection overruled.

Mr. O'Brien: Covering a period of thirteen years, and multitudinous pieces of equipment

The Witness: It has.

Q. I am referring to the land.

A. Yes, I so understood you.

Mr. O'Brien: Now, if anybody can make out
23748 what that means, then they can read the Chinese language. "As you previously testified." What those words mean in there, what his second answer means, your Honor, I earnestly submit is nothing but confusing in this record.

The Master: Anything else, Mr. Ransom?

Mr. Ransom: That is all.

Cross-examination by Mr. Chambers:

Q. Now, the first piece of property that you testified to yesterday concerned Block 2583, Lot 360. Have you that?

A. I have that sheet of Exhibit 16, but I do not

think it was the first plot to which I testified yesterday.

Q. Now, the first block and lot you testified to yesterday was Block 991, Lot 1?

A. Yes, it was.

Q. When you made up your Exhibit 178, page 3, had you examined the tax map that you spoke of yesterday?

A. I had examined it.

Q. Now, your description—

A. (Interrupting.) Don't understand me that I examined it at the time I made the map. I examined it 23750
several years before on several occasions. I knew what the tax map showed, if that is what you want to find out.

Q. You put in there more land than the city taxes the company for. How did you come to do that?

A. I put in more land than the tax map showed.

Q. Yes, more land than on which you paid taxes?

A. No; I put in the land owned by the company.

Q. You only pay taxes on what is on the Tax Map. You know that?

A. I don't know how the assessor assessed the land. I was making an exhibit that showed—

Q. (Interrupting.) You have looked at his map, 23751
you know on what land he places his assessment now, don't you?

A. I know that the map is supposed to represent the city's contention.

Q. You have looked at his map and you know now what land he assessed your company for there?

A. I know since hearing his testimony, but did not know before.

Q. Do I understand by your testimony that you acknowledge now that your exhibit is erroneous?

A. No, I do not.

Q. Well, which one do you take.

A. The exhibit is right.

Q. You say the Tax Map is less in area and yours is correct? Who is right about it?

A. The judgment of the Supreme Court is right.

Q. You are still standing on your 178, are you?

A. I am still standing on Exhibit 178 in every particular, every one of the eighteen sheets.

Q. Well, what did you have in mind when you were telling the Court that yours was a greater area than his?

23753 A. Because it is. The tax map shows the city's contentions.

Q. Well, then, you contradict the map and say it is not right, is that it?

A. I contradict the tax map as being correct, and I have in back of me the judgment of the Supreme Court when I do it.

Mr. Chambers: Now, I move to strike out his evidence in regard to that on the ground that he is impeaching his own witness. There is a witness who admits it.

The Master: Exception.

Q. How much greater area does yours include than

23754 his, do you know that?

The Master: I won't take that. Question not allowed.

Mr. Chambers: Exception.

Q. Now, Lot 1, Block 979, as to that lot, again, your Exhibit 178 is at variance with the City Tax Map?

A. It is.

Q. You say that the city's tax map is erroneous and yours is right?

A. I say it represents the city's contentions, Exhibit 178 represents the company's contentions of ownership.

Q. You say yours is right and theirs is wrong?
A. I say ours is right.
Q. And theirs is wrong?
A. I do.

The Master: That is what you say about every one of these variances, that you are right and the city is wrong?

Mr. Chambers: Not all of them, does he?

The Witness: I do.

The Master: I will not let you ask that same question as to every one of them.

Mr. Chambers: Well, they vary their reasons. 23756

The Master: I don't care what the reasons are. He says their map is right and the city's map is wrong. He has taken it from the deeds and judgments.

Mr. Chambers: Doesn't that impeach their own witness?

The Master: I don't care about that. I have overruled your objection.

Mr. Chambers: It is the first time I knew a party could impeach his own witness.

The Master: It is not the first time I have known it. I have known it since I left law school. 23757

Mr. Chambers: That you could impeach your own witness?

The Master: Yes, you could bring in a witness to show a true state of facts when one witness is not correct.

Mr. Ransom: Especially when you call an adverse interest.

Mr. O'Brien: Where is the adverse interest, Judge?

The Master: No adverse interest. That is stupid. But where one witness has been in error

in testifying to the fact, you can bring another witness who will show the fact or show a different state of facts.

Mr. Ransom: That is a perfectly sound rule in general, aside from the question—

Mr. O'Brien: Judge Ransom forgets the city is not a party here.

The Master: Well, I have not forgotten some of the things I learned in law school. Don't let us argue it.

Mr. Chambers: There is no proof, you under-
23759 stand, that the city is in error.

The Master: No.

Mr. Chambers: Not at all. The judgment roll is not in evidence; the damage maps are not in evidence.

The Master: Yes, it is.

Mr. Ransom: Of course they are in evidence.

Mr. Chambers: They are not.

Mr. Ransom: Yes, every one of them.

The Master: This witness said, "I prepared a map on deeds and other instruments in evidence." The city has made up a map from other sources, and he says theirs does not agree with his, but
23760 this is his record.

Mr. Chambers: I do not think that is so at all. I think you would see it if I asked him a question.

Q. Block 2583, Lot 360.

The Master: What page of the testimony have you got?

Mr. Chambers: Page 5679 (mimeograph copy).

Q. You said there is variance between your map and the city's tax map?

A. I did not.

Q. There is no variance?

A. No.

Q. What were you trying to testify there about that? I cannot understand it?

A. Well, which is the answer that you would like to have illuminated?

Q. You said that there was no filled in land easterly of and exterior to the property line of the complainant's company. What do you mean by that?

A. The complainant's property.

Q. I will read the answer: "There is no filled land easterly of and exterior to the property line of the 23762
complainant's company."

The Master: It should be "property," should it not?

The Witness: Correct, it should be "complainant's property."

Q. What property? Where do you mean, on the East River side?

A. I do.

Q. There is no filled in land there?

A. None east of our bulkhead.

Q. Who said there was—Mulhall?

A. He did.

Q. And he is wrong about it? 23763

A. There is no such land there. He is wrong, yes.

Q. Is that the only difference between you and Mr. Mulhall?

A. That is all.

Q. He said there was filled in land there?

A. Yes.

The Master: He was mistaken about it?

The Witness: He was.

Q. How do you know?

The Master: Because he says so.

A. I am familiar with the property. I know there is no land filled in.

Q. You have examined it?

A. I have.

Q. How do you know it is not filled in?

A. I am there too frequently. You cannot do those things overnight.

Q. That is no indication. What do you say?

A. You cannot do those things overnight.

Q. You say it is not filled in?

The Master: The question is not allowed.

Q. Your map includes some land under water there, does it not?

23765 A. Sheet 16?

Q. Yes.

A. It does not. There is a physical bulkhead along the line shown by a heavy line.

Q. Where is your line there? There was some doubt where your line was. Is it the little finer line inside the heavy one on the east side?

A. The heavy line which is produced both north and south is the exterior line of the complainant's property. The heavy line and fine line are merely the conventional representations of a bulkhead.

Mr. O'Brien: Your Honor, may I ask the witness a question at this time?

23766 The Master: No, sir.

Mr. O'Brien: He is lapsing into big time words now.

Q. Referring to Block 985, Lots 19 and 20, on Sheet 4 of Exhibit 178.

A. I have it.

Q. What was on Lot 19 on October 13, 1913?

A. Nothing except the fences.

Q. In 1914, what was on it?

A. It was used then for the storage of large cast iron fittings belonging to the Department of Mains and Services.

Q. During the entire year?

A. Of 1914?

Q. Yes.

A. Yes.

Q. What was on it in 1915?

A. The same thing. It has been used continuously for that purpose.

Q. In 1916 there were fittings on it?

A. Yes.

Q. And in 1917 fittings?

A. Yes.

Q. What was on Lot 20 on October 13, 1913? 23769

A. The same answers.

Q. Nothing on it then?

A. Not on October 13, 1913.

Q. No; nothing on it until 1914?

A. Correct.

Q. Then you had some fittings?

A. No. Immediately after October 13th, 1913, we began to use it. Curtis & Blaisdell vacated it on that day and we immediately moved in.

Q. You told me a minute ago that there was nothing on Lot 19 in 1913?

A. On the date October 13, 1913, there was nothing. 23768

Q. You had leased it prior to that time to this coal company?

A. We had, yes.

Q. What was it, just a pile of fittings; no buildings?

A. No buildings. It is inclosed by a heavy timber fence.

The Master: The description you gave of this property, as to its use in 1918, fully describes its use as you say it has been since October 13, 1913?

The Witness: Correct.

Q. Those fittings could have been stored elsewhere?

23770 Herbert W. Aldrich, Cross.

The Master: The question is not allowed.

Mr. Chambers: Exception.

Q. That is the same kind of use that you testified to as in 1918?

The Master: The question is not allowed. He has already said so.

Mr. Chambers: Exception.

By the Master:

Q. Mr. Aldrich, as to any of these properties from the time they began to be used, have they been used in the manner that you have described as their use in
23771 1918, or have there been changes from time to time in the character of the use?

A. I am not quite sure I understand your question.

Q. Take this property on Sheet 1, the corner of Hester and Elizabeth Streets.

A. Yes, sir.

Q. You said, as I understood, that back for many years that has been used by the Gas Company?

A. It has.

Q. Has it always been used for the same purpose that it was used during the year 1918?

A. It has. By the complainant.

Q. Yes.

23772 A. It has.

Q. Is that true of the next sheet, or has the use of the property been changed from time to time?

A. Its use has not changed since it came into the ownership of the complainant company.

Q. The character of the building has changed?

A. The character of the building, but the same use.

Q. Take the next sheet. This property you say has been used away back to 1905 or 1906?

A. It has.

Q. There again, what I am trying to make clear is

whether as to any of these parcels on Exhibit 178, that you say has been used for years back, the use has been the same always as you have testified the use was in 1918, or whether there has been a different use. If you say the use has been the same in all these years, I do not see the necessity for cross-questions as to the other years.

Mr. Ransom: Of course there are several of these parcels that were put in use subsequently.

The Master: I am talking about the time when they began to be used. Whether it is 1905 or 1912 does not make any difference. What is your answer? 23774

A. The answer is, yes.

Q. That the use to which the property is now put is precisely the same use since its use was begun, according to your testimony?

A. Yes, sir.

Q. At the dates mentioned?

A. Yes, sir.

By Mr. Chambers:

Q. Referring to Lots 50, 53, 54, 55 and 56 in Block 1008, when was the building extended that you refer to?

A. In 1912. 23775

Q. Yes, but I mean at what time, December, 1912?

A. I don't remember the exact period, but my impression is it was during the summer.

Q. But you did not begin to use them until December 31, 1914; you do not claim any use until that date?

A. The Consolidated Gas Company built those buildings and used them from the date they were built. The first buildings were built in 1906.

Q. Have you not got the wrong piece of property in mind?

A. You mean Block 1008?

Q. Lots 50, 53, 54, 55 and 56.

A. I am talking about the same property that you are.

The Master: Located on the south side of 132nd Street.

Q. Who built the building that you are talking about?

A. The Standard Gas Light Company.

Q. And they continued to own it how long?

A. Until the date I have given.

Q. December 31, 1914?

23777 A. Correct. When it was sold to the Consolidated Gas Co.

Q. And you claim use since December 31, 1914, according to your testimony?

A. You mean the use of the land or the buildings?

Q. The whole business.

A. The use of both the land and the buildings continues from December 31, 1914, and the same use of the buildings back in 1906, when they were built.

Q. In regard to Block 2583, Lot 360, you say now that was used for the storage of large cast iron pipe, in addition to the use of it as a testing station. You did not testify to that before; was it an omission on

23778 your part?

A. What do you mean by before?

The Master: The 1918 use.

Q. Why do you testify to it now when you had gone over it before?

Mr. Ransom: I object to the question.

The Master: What page is this?

Mr. Chambers: Page 5683.

Mr. Ransom: He testified to it.

A. Now, what is the question?

Q. You have been over that before, when you testified a couple of months ago?

A. Back in the summer, yes.

Q. What difference is there between your testimony now and your testimony then?

A. None.

Q. Did you testify before that it was used for the storage of large cast iron pipe?

A. I did. Most surely did, and even gave the location where I had last seen the pipe.

Q. What was your idea then in repeating what you had already testified to?

Mr. Ransom: Objected to.

Mr. Ransom: The question is not allowed.

Mr. Chambers: I want to see if there is any 23780
difference.

The Master: The question is not allowed.

Mr. Chambers: Exception.

Q. The use of this on December 31st, 1917, and from then on was not the same as in 1918, was it, as you told the Master a minute ago?

A. On what date? December 31st, 1917? The use by the complainant company has been that described by me in each year.

The Master: There is only that one year, December 31st, 1917.

Q. That is all you claim, is it not?

The Master: It is only the year 1918. 23781

A. Are you referring to your last question?

Q. Yes.

A. May I have it read?

Q. How long do you claim use on this?

A. You are talking about Lot 360 of Block 2583?

Q. Yes.

A. Well, I have testified that it had been in use by the complainant company for the purposes stated since July 23rd, 1906.

Q. What are those? The tunnel was not built then, was it? When was the tunnel built?

23782 Herbert W. Aldrich, Cross.

A. The tunnel was started—you are referring to the tunnel of the East River Gas Company?

Q. Yes.

A. The tunnel was started in 1910.

Q. You used this property, did you not, for building the tunnel—the East River Company did?

A. A part of the area was occupied by the construction plant.

Q. So that the use in 1918 was not the same use that was put upon this property in 1910?

A. The complainant's use which I have set forth in
23783 my answer yesterday was the same in 1918 as it was in 1907 and 1908 and the other—

Q. What did you use it for in 1906, 1907, 1908 and 1909—the Consolidated Gas Company?

A. The complainant used it for the storage of cast iron pipe.

Q. The whole plot?

A. No, varying portions of it. We had also stored some machinery there—derricks and things of that kind.

Q. Was your brick testing station there in 1906, 1907 and 1908?

A. No.

23784 Q. There is a use in 1918 that you did not put it to?

A. Which is covered in my testimony yesterday.

Q. You told the Court a minute ago that this property, all of it, was used in the earlier days for the same use that it was put to in 1918. That is not so as to this piece, is it?

A. I testified yesterday when the testing station was built.

Q. Now, I am asking you whether that is not so, as you told the Master, that the use is the same as the use in 1918, the use in the earlier days, as to this property?

A. What I have told the Master is correct, that the complainant company has used this piece of property for the storage of large cast iron pipe since the property was acquired, using varying portions of it, and at a later date the brick testing station was erected on the property.

Q. So the use in 1918 of that piece of property is not the same use as in 1910?

The Master: I will not allow that question, because it has been answered different ways many times, and I can see the answer myself.

23786 Mr. O'Brien: Your Honor, a few minutes ago when Judge Ransom was putting that question, using the past perfect tense, I called your attention to the confusing aspect of the question and answer. It is pretty hard to tell what Mr. Aldrich means when he says it has been used. It might be used for day and then discontinued. It might be used yet. If he would be a little more specific we would know what he meant.

The Master: Maybe you can get him to be more specific when you cross-examine him.

Q. How much cast iron pipe did you have there in 1906?

23787 Mr. Ransom: Objected to as immaterial.

The Master: I am going to allow that.

Mr. Ransom: Here is the question: These defendants call for this 1906 to 1917 data and we furnish it to them. It is not anything I think has anything to do with the case and I doubt whether your Honor does. They have got all this detail.

Mr. Chambers: When did we call for it?

Mr. Ransom: Unless it is to be used simply as a device for further delay—

Mr. Chambers: I do not understand what he is—I consent that Mr. Aldrich's testimony all be stricken out.

The Master: How much cast iron pipe did you have there in 1906?

The Witness: I do not remember.

Mr. Chambers: We did not call for this testimony.

The Master: Next question.

Mr. O'Brien: Your Honor, make that clear now. Judge Ransom has made a statement—

23789 The Master: I am not going to settle any disputes between counsel. That is not what I am here for.

Mr. Chambers: It is not correct when he says we called for any such thing.

Q. How much cast iron pipe?

The Master: He says he don't remember.

Q. Is that true for the other later years?

A. It is.

Q. You don't remember?

A. No.

Mr. O'Brien: The objectionable part of this whole order of proof is that they will put a wit-

23790 ness on for a trial heat and see how he runs, and then take him off for a month or two and get him in training. They did that with Teele, that they have done with Aldrich, and they are going to do it with Woods. I call your Honor's attention to this at this time so that when we ask for the same privilege it may be accorded us.

Q. Now, Block 3236—you told the Court yesterday that this whole piece of property was used as a holder station.

A. Which answer do you refer to?

Q. Page 5685. "Q. The property has been used as

a holder station since the erection of these structures? A. It has been." Have you found it?

A. Yes.

Q. Now, you intended to tell the Court that this whole block and lot were so used?

Mr. Ransom: I object to the question. That has all been gone over.

The Master: I will permit this question.

A. I did intend to say that.

Q. How about the tennis court there, is that moved off?

Mr. Ransom: Objected to. That has been 23792
gone into at great length.

The Master: It is allowed.

A. It has not been moved off.

Q. The situation has not changed since you testified last?

A. No, I meant that the whole property was used as a holder station.

Q. And what you said about that under cross-examination is still the situation?

A. All my previous answers stand.

Q. Now, in regard to Block 989, Lot 1, that was acquired you said April 30, 1918. Didn't you cover all that before in your testimony? That does not 23793
relate to previous years?

The Master: Was the property acquired in 1918.

The Witness: It was.

The Master: What is your question?

Mr. Chambers: I don't know why they should bring it up again.

The Master: I don't know, either, but does it do any harm?

Mr. Chambers: It might, if they injected something else now. Your Honor will not allow us to prove the same thing twice.

Mr. Ransom: It relates to the call of the Attorney General for details underlying taxes.

Mr. Chambers: I dispute that I called for any such testimony as this.

Q. You were asked this question in regard to that—

A. What page?

Q. 5685. "Q. What buildings or improvements are on this property and what use of the land and improvements has been made by the company from the date of the acquisition of the property to December 31, 1917, at the present time." Now, you didn't

23795 use it in 1917, did you, because you did not acquire it until April 30, 1918?

A. What is your question?

Q. I read the question at the bottom of that page.

A. Yes, now, what is your question?

Q. I say, you didn't use it until April 30, 1918, did you?

A. The complainant company was using the buildings and improvements described in my answer, pages 5685 and 5686, before April 30, 1918.

Q. Before you acquired it?

A. Before we acquired the land.

Q. You were renting it, you mean?

23796 A. The buildings were owned by the complainant company.

The Master: The buildings were built in 1906?

The Witness: They were.

The Master: Question not allowed. We have had enough of that.

Mr. Chambers: Exception.

The Master: Do you still think you need these tax maps?

Mr. Chambers: Tax maps here?

The Master: Yes.

Mr. Chambers: They may become important. Why is there any objection to having the exhibits remain here?

The Master: None, except that there is no sense of keeping men here with maps if you don't want them.

Mr. Chambers: If you will hold up the case until I send for them, let them go. I haven't any objection, but if we need them we want time to get them here.

Mr. O'Brien: It seems strange to have Judge Ransom, who pulled these men out of their beds 23798
on their vacations up in the Catskills to have them to come down here post haste and testify, it seems strange for him to be solicitious about their waiting half an hour here now.

The Master: I didn't hear Judge Ransom say anything. I noticed the men sitting here with these books.

Mr. O'Brien: No, but he has been speaking aside here in the jury box.

Q. Now, the old office building was on Lots 56 and 54, was it not?

Mr. Ransom: Objected to as fully covered.

Mr. Chambers: It has not been fully covered. 23799

The Master: Objection sustained.

Mr. Chambers: It has not been covered.

The Master: It has been sufficiently covered.

Mr. Chambers: No, exception.

Q. You included yesterday in your answers to questions that this entire property was used by the Consolidated Gas Company. Included in that is the addition to the 15th Street Office Building on Lot 47, rented to the New York Mutual Company?

Mr. Ransom: I object to that. It was gone into by Mr. Chambers.

Mr. Chambers: He said again that that building on Lot 14 was used by the company.

The Master: I will sustain the objection upon the ground that it is very fully covered as to the year 1919.

Q. Has any change taken place?

The Master: That annex to the office building there is still being used as you said it was in your original examination?

The Witness: It is still being used for the same purpose.

23801 Q. The Mutual Company is still there?

A. It is.

Q. And occupies that whole addition?

A. The whole 2-story extension on Lot 47, Block 870.

Q. How long back did the Mutual Company occupy that, ever since it was built, didn't they?

Mr. Ransom: Objected to as having been gone into fully with this witness.

The Master: I will allow it.

A. Yes, ever since it was built.

Q. And that was when, 1912?

The Master: The question will not be allowed.

23802 Mr. Chambers: Exception.

The Master: It is in the record.

Q. In 1912, before the erection of the office building what did you have on Lot 59?

A. Of Block 870?

Q. Yes.

A. There was a brick and brownstone office building, which was the general offices of the complainant company.

Q. That occupied the whole of Lot 59?

A. Yes, the whole of Lot 59.

Q. What did you have on Lot 60?

A. Lot 60 was an adjacent brick building which

also contained the offices of the company. The two buildings were intercommunicating.

Q. Now, other companies occupied these two buildings you have just described during these years?

A. No.

Q. No other company?

A. Only the complainant company.

Q. Only the complainant company?

A. Yes.

Q. What was on Lot 56 in those prior years?

A. On Lot 56 was another brick building facing on 15th Street, which was known as 124 East 15th Street, 23804
and which again communicated with the main building on the corner, and in which were the offices of the company.

Q. Nobody else occupied it except the complainant company?

A. No other company.

Q. You are speaking now from 1906 down to 1912 in answering these questions?

A. Yes.

Q. What was on Lot 54 in those earlier years?

A. On Lot 54 there was a three-story brick building abutting Lot 53, not then owned by the complainant company, which was used by the Commercial Depart- 23805
ment of the complainant company.

Q. No other company used it?

A. No other company.

Q. And that was from 1906 on to the erection of the new building?

A. No, that building as I recall was burned and torn down, I think in 1910. The exhibits will show. My recollection is that 1910 was the year it was burned and torn down.

Q. So that from 1910 to the erection of the office building that lot was vacant?

A. Oh, no, it was not vacant. Then it was used for parking the automobiles used by the department heads when they were coming to the general office, to get them out of the street. Some of them were parked there.

Q. Of the Consolidated Gas Company?

A. Yes.

Q. What was on Lot 53 from 1906 down to the erection of the new office building?

A. On Lot 53 from 1906 down to the time it was acquired by the complainant company you are asking
23807 me now?

Q. Yes.

A. It was occupied by a building that had been a music hall.

Q. It was not used by the Consolidated Gas Company?

Mr. Ransom: It was not owned by them.

A. Not until they acquired it.

The Master: Which was when?

The Witness: That was acquired, as I have already testified, July 2, 1912.

Q. Now, that fire was in 1908, wasn't it?

A. The fire that burned 124 East 15th Street? I
23808 think it was 1910. I am inclined to stick to my memory on that. Mr. Maltbie seems to have a memorandum but—

Q. There wasn't any other fire there except that, that destroyed a building?

A. That destroyed a building on the complainant's property? I only recall that one fire that destroyed a building.

Q. Now, of this block and these lots you have given me 54, 56, 59 and 60 as having been in some way occupied by the complainant company from 1906 down to the erection of the new office building?

The Master: Question not allowed.

Mr. Chambers: Exception.

The Master: It is a waste of time.

Mr. Chambers: I cannot see why you charge us with that repeatedly.

Q. Was anything on Lot 50?

The Master: Lot 50, when was that acquired? Have you testified to that?

The Witness: I have.

The Master: Question not allowed.

Q. Was there anything on it used by the gas company prior to the time it was acquired? 23810

A. Nothing owned or used by them.

Q. Is that same answer true of Lot 49?

A. It is.

Q. Is that same answer true of Lot 47?

A. It is, by which I mean it to be understood that up to the date the company acquired these properties it made no use of them and had no structures upon them.

Q. Now, Block 715, have you any memorandum or anything there with reference to Block 715, Lot 51, between West 17th Street and West 18th Street, Ninth and Tenth Avenues?

A. Memorandum giving what information? 23811

Q. Well, how far does it begin from Tenth Avenue easterly? You said it was thirty-five feet wide and ninety-two feet deep?

A. Well, it is 150 feet from the easterly side of Tenth Avenue to the westerly line of Lot 59, and Lot 59 and 51 together are 210 feet, so it is 325 feet from the easterly side of Tenth Avenue to the westerly side of this Lot 51. I make that computation from memory, without any map before me.

Q. It is thirty-five feet wide by ninety-two feet deep?

A. Yes.

23812 Herbert W. Aldrich, Cross.

Q. You say that it adjoins Lot 59?

A. It does.

Q. You did not testify about Lot 59, if I understood you aright?

The Master: The question is not allowed.

Mr. Chambers: Exception.

Q. Did you include in your testimony yesterday anything with reference to the lot to the west, 59th?

The Master: Question not allowed. The testimony is in the hands of counsel and he can read it.

23813 Mr. Chambers: I may be in error about it. I do not see it yet, if there was.

Q. You said on the rear of this lot was a two-story brick building extending the whole width of the lot. Do you mean that that covered 59? You did not say?

A. I mean what I said, Lot 51.

Q. It does not refer then to 59?

A. No.

Q. What was that building used for?

The Master: The question is not allowed. The witness has told us what these buildings were used for. I am not going to have you go all over that again on cross-examination.

23814 The Witness: Page 5688 is the answer.

Q. That does not state what this building—unless it refers to that answer down below. Was that the answer there? That it was used for a paint shop? Is that the building?

The Master: I won't allow the question.

Mr. Chambers: Exception.

Q. Well, was it used for any of the other companies or used by any of the other companies?

A. You are referring to the paint shop which was on Lot 51?

Q. No, I am referring to the buildings. Whether those are the paint shops or not, I don't know, the Court won't let me ask?

A. It was not used by any company except the complainant.

The Master: Mr. Chambers, we will take a recess until half-past eleven to give you an opportunity to confer with Mr. Maltbie, so that when we re-convene at half-past eleven we won't have to wait from time to time to permit you to frame your questions.

Q. Lot 26, Block 989, that is not on your Exhibit 178, is it? 23816

A. There are lines on Exhibit 178 that represent that entire Block 989.

Q. Will you look at the tax map over there, Lot 26, Block 989? It that the same as the lot that you are referring to?

A. You mean the dimension of the property on 15th Street?

Q. Yes, is that the same that you referred to?

A. This is the lot to which I referred. The tax map shows it 191 feet crossed out and 221 feet substituted. The 191 feet dimension is the one given in the petition of the City of New York for the acquisition of the property. 23817

Q. Then the lot you referred to—

A. That is the lot I referred to.

Q. As being 191 feet on 15th Street?

A. Yes.

Q. Is your dimension the same on Avenue D?

A. It is 206 feet 6 inches.

Q. The rear would be the same?

A. Yes.

The Master: Next question, Mr. Chambers.

We adjourned for fifteen minutes so as to avoid these conferences between counsel and his assistants.

Q. Now Block 991, Lot 50, will you look at this tax map and see if Lot 50 which you referred to is the same as this bulkhead on this tax map, page 43?

A. Yes, sir, that conforms to my description.

Q. Is Lot 26, Block 991, the same as you refer to?

A. It is the same lot as the one to which I referred, but I gave no dimensions for it.

23819 Q. Do you know the dimensions of Lot 26?

A. I have no memorandum with me giving me the dimensions of Lot 26.

Q. But you believe that would be the same lot?

A. I know that that is the same lot by the streets bounding it, but as to the dimensions I have no memorandum with me.

Q. Well, the lot occupies the whole block?

A. It does.

Q. Bounded on all sides by streets?

A. It is.

Q. On 16th Street, 15th Street, Avenue B and the exterior street?

23820 A. The exterior street commonly called Tompkins Street, incorrectly so called.

Q. The bulkhead there on Lot 50, what was that used for?

A. The unloading of coal and other materials for the complainant company; and it was also at that bulkhead that they put the tar and ammonia aboard the barges and took them away.

Q. That is all used in connection with the 14th Street plant?

A. It was.

Q. Now, take Block 690, referring now to page

5691 of the testimony, did the stenographer make an error, or did you omit Lot 12?

A. I omitted nothing. The question did not include Lot 12.

Q. Now, was the lumber, pipe, building material, and so forth stored on all those lots?

A. As of what date?

Q. Up to January 1st, 1914. Take Lot 40, were those materials stored on that lot?

A. Why, I do not recall what was on each particular lot at any particular date. That stuff moved in and out. The shoring timber, as it might be required for 23822
some pipe laying job in the street, would be taken away in whole or in part and correspondingly the pipe, the stock was going in and out.

Q. For what plant was it used, any particular plant?

A. So far as it related to a particular plant it would have been the 18th Street station, but it was more generally property used by the company in its general operations.

Q. What was on Lot 48 as distinguished from the others, anything?

A. On Lot 48?

Q. Yes.

A. Why, I do not recall anything. It was an open 23823
lot enclosed within the same fence.

Q. Can you give me the description of those lots?

A. I already did describe them yesterday.

Q. Where, on what page?

The Master: The question is not allowed.

Mr. Chambers: I do not see why. Where are they described? He said they are described.

The Master: I won't allow the question.

Mr. Chambers: You mean because I can see myself?

The Master: Yes.

Mr. Chambers: Well, they are not described. Will you describe them, Mr. Aldrich?

The Master: I won't allow it. They have already been described.

Mr. Chambers: The dimensions I mean.

The Master: The dimensions of what?

Mr. Chambers: Of lots—

The Master: Which lots are you talking about?

Mr. Chambers: 40, 42, 43, 44, 45, 48, 49, 50, 51, 52 and 53, block 690.

The Master: They are all on the south side of that street, with the exception of three lots. I'll let him tell if he knows.

23825

The Witness: They were 92 feet deep, and they were 25 feet wide.

The Master: Each lot?

The Witness: Each lot.

The Master: Next question.

The Witness: Now—

The Master: Never mind.

Mr. Chambers: Well, I suggest—what else was it you wanted to say?

The Master: He was going to add "by the number of lots times 25," were you?

23826

The Witness: No, I was going to refer to the westerly line of that block being a diagonal line that cuts off the rear corner of one of them, so that it is not a full area.

Q. You mean Marginal Street?

A. The Marginal Street, yes. It is my recollection that the rear corner of one of them is clipped off by the diagonal line of the Marginal Street.

Q. Now, I asked you a little while ago about Lot 50, Block 715, in connection with Lot 51. You did mention it after all?

A. I did not deny that I did, you said that I did not.

Q. On page 5693. Now, what was on that Lot 59 from 1906 to January 1, 1915?

A. A large brick building enclosing two gas storage holders, as I have already testified.

Q. Was that all on Lot 59, or was some of it on 51?

A. It was entirely on Lot 59. The easterly wall of this building was the dividing line between Lots 51 and 59.

Q. Do you know the dimension of Lot 59?

A. I have no map before me, but I am quite sure it was 175 feet on 18th Street, and I know it was 92 23828 feet deep.

Q. The property you spoke of this morning first thing was Block 1092. What was the lot number?

A. The first question asked me this morning was directed to Block 1092, Lot 1, part of Lot 7; Block 1093, part of Lot 9; Lot 1, and Block 1107; Lots 23 and 28. The first question asked me this morning related to those.

Q. Well, now, Lot 1, was that the same as this Lot 1 scratched out on this tax map, page 23?

A. You mean Lot 1?

Q. When you referred to Lot 1, what part of this tax map were you referring to? 23829

A. I was referring to the area of land between the east side of Twelfth Avenue and the blue line which indicates the line of property taken by the city in the condemnation proceedings.

Q. Were the dimensions the same as—do you know the dimensions?

A. I have no memorandum before me.

Q. Well, are these dimensions here correct on this tax map?

A. I could not verify them without a map before me, but I would be surprised if there was any dispute

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over them, because that has all been threshed out in condemnation proceedings.

Q. Then the next lot you refer to, where was that? First of all, what was on Lot 1 in 1905 down to August 1, 1913, was it?

A. Yes.

Q. What was on that?

A. There was a portion of the coal shed, a portion of the generator house, that is to say, most of the generator house, most of the boiler house, the oil pump house, the tar separating system; there was a scale
23831 house, the hot scrubbers, underground piping, all in Lot 1.

Q. What was the next lot you referred to, 7?

A. 7, yes.

Q. Is that the same as this 7 on this tax map?

A. It is.

Q. What was on that Lot 7?

A. I think that on Lot 7 was the remainder of the generator house, the remainder of the boiler house, the pump house, the condensers and scrubber house, engine blower house, purifier house, four gas storage holders, one relief holder, a valve house, a carpenter shop, another storage building, and out in the yard
23832 there were three multi-tubular condensers. All of those buildings, of course, contained miscellaneous gas works equipment comprising the complainant's water gas plant.

Q. Was there any other lot included in the combination you have mentioned?

A. You mean involved in it?

Q. Yes.

A. No, not in that block.

Q. Now, the city condemned this, you said, August 1, 1913?

A. They condemned the area included in Lot 1, August 1, 1913.

Q. You mean the title passed on that date?

A. It did; I passed it.

Q. Lot 9 in Block 1093, you spoke of some land west of Lot 9. Is that shown on this tax map, page 23, west of this blue line (indicating)?

A. It is.

Q. In the middle of the block?

A. It is.

Q. And that is the lot you refer to?

A. It is.

Q. And that was condemned and taken by the city?

A. It was. 23834

Q. And title passed August 1, 1913?

A. It is.

Q. What was on this piece before it was condemned?

A. There was a large purifying house, a machine shop, two oil storage tanks, two brick storage buildings, a blacksmith's shop, a wagon shed, a paint shop, a group of underground storage tanks and miscellaneous underground piping. Of course the buildings referred to contained the gas works equipment.

Q. Was that condemnation proceeding a friendly one, so that you passed title on that day under agreement? 23835

Mr. Ransom: I object to the question. Those things are not controlled by friendly agreements.

The Master: I will allow it.

Mr. Ransom: That is operation of law.

The Master: I will take the answer.

Q. How about that?

A. I do not understand the question. It was taken by summary process of law. I do not know whether there is any friendship in that or not.

Q. Block 1093. What did you include in the parcel which you sold June 4, 1919?

A. The 75 feet comprising three city lots lying just east of the portion printed in pink on Exhibit 178.

Q. Was that included in the land used prior to August 1, 1913?

A. It was.

Q. What was on that little parcel?

A. There was a one-story building which covered nearly the entire area and in it there was stored the refractory materials.

Q. What use was made of it?

A. The refractory materials were the repair parts
23837 for the gas generating apparatus.

Q. You said there was a structure on it?

A. Yes, sir.

Q. When was it torn down?

A. The building?

Q. Yes.

A. We tore it down in the summer of 1914.

Q. What was it used for after that?

A. The land?

Q. Yes, after you tore down the building, up to the time you sold it on June 4, 1919.

A. Part of the time it was rented to several different tenants and a part of the time it was vacant
23838 and unused. I am referring now only to the 75-foot portion that was sold to the Standard Oil Company on June 4th last.

Q. The Inwood station in Block 2175, you say there was a holder on that property; what was the size of it?

A. 60,000 cubic feet capacity.

Q. Did the Kingsbridge holder take the place of that holder?

A. It now performs the functions that that holder performed.

Q. The holder on the Inwood station that you have

just described, was that the holder that served that territory up there?

A. I do not know what territory you mean. It did serve the territory—

Q. (Interposing.) I mean the territory now served by the Kingsbridge holder.

A. No, not all of the territory now served by the Kingsbridge holder. It served a smaller territory.

Q. How much of a territory did it serve—the Inwood holder?

Mr. Ransom: Objected to.

The Master: Objection sustained. 23840

Mr. Chambers: Exception. I cannot understand why that is ruled out.

The Master: Because I do not think it is useful for us in this case.

Mr. Chambers: Well, we do.

The Master: I do not agree with you.

Mr. Chambers: May I ask respectfully if there is any proof that we can offer which you think will be useful, along these lines?

The Master: Along what lines?

Mr. Chambers: About this holder at Kingsbridge and the holder at the Inwood station.

The Master: I do not know. 23841

Mr. Chambers: Well you see, your Honor does not know what our defense is and will be. In other words, it makes it a little hard to defend this case when your Honor rules out questions without any objection being made, and which we think are very important.

The Master: Why, an objection was made and I sustained it.

Mr. Chambers: I did not hear any.

The Master: You did not hear any?

Mr. Chambers: No. I might state on the record that the purpose of the examination is to show that that holder was of no use and of no value and should not be included in the property as used and useful to the company during the period in question.

Q. Block 689, Lot 17. Can you give me the dimensions of that lot?

A. I have no memorandum with me.

The Master: Well, you cannot tell.

The Witness: But it was substantially half of

23843 the original 800-foot block.

Q. Lot 12, Block 690, can you give me the dimensions of that?

A. 184 feet on Tenth Avenue and 125 feet on 18th Street; that comprised the frontage on Tenth Avenue. Then the rest of Lot 12 extended down to the Marginal Street. That is again an irregular block since the condemnation proceeding.

Q. That is the same block in which all these other lots were—53 and so on, and 48?

A. Yes. They are the northerly side of the block, and Lot 12 is the southerly side and the easterly end.

Q. What was on that particular lot?

23844 A. Lot 12?

Q. Yes.

A. I have already described it this morning. I described it yesterday.

Q. Gas-storage holders?

A. Yes.

Q. What size holders were those?

A. 250,000 cubic feet each.

Q. Two of them?

A. Two.

Q. Then there was a brick building boiler house?

A. Yes.

Q. Lot 11, Block 691, can you give me the dimensions of that?

A. I cannot. That again was an irregular area.

Q. On that was the valve house and frame house. Was that all?

A. And the two gas storage holders that I have already described.

Q. They were on this, too?

A. They were.

Q. As well as on Lot 12, do you mean?

A. There were two different sets of holders. There were two on Lot 12 of Block 690, and two more gas 23846
storage holders on Lot 11 of Block 691.

Q. They were two used in connection with the 18th Street discontinued plant, were they?

A. They were.

Q. Lot 14, Block 1716, can you give me the dimensions of that?

A. You mean Block 716?

Q. Well, I got it Lot 14, Block 716.

A. Yes. You said 716.

Q. What are the dimensions of that lot?

A. 92 feet deep and 75 feet front. I have no plan before me.

Q. What was that used for? 23847

A. I described it yesterday and again this morning.

Q. Where was the dwelling house?

A. At the westerly corner, facing on the street.

Q. And who occupied that?

A. The late Cornelius Ahern, who was in charge of the property for the company.

Q. How much of the lot did that house occupy—half of it?

A. No, I think the front of the house was only about 18 feet, I think, on the street.

Q. Did it occupy a strip 18 feet right straight through?

A. No. The house was, as I recall, about 30 feet deep, ran back about 30 feet.

Q. So the house occupied about that space?

A. Yes. The rear portion of the house downstairs was used as a stock room for the garage. Ahern only had the ground floor at the front and the upstairs portion.

Q. Block 1070, Lot 5, can you give me the dimensions of that?

23849 A. I have no memorandum, but I think it was five or six city lots.

Q. Will you look here and see if it is the same as on page 11 of this tax map? (Witness examines map.) Have you looked at it long enough?

A. I have. That is the lot.

Q. And the dimensions there, 200 feet by 98.9, are correct?

A. I should believe they were correct, yes.

The Master: How many city lots?

The Witness: There were about eight city lots.

Q. Were the buildings, the stable building and the

23850 brick building on there, used in connection with the coal gas plant at 42nd Street?

A. In part; and in part in connection with the 44th Street plant, and in part in connection with the department of mains and services of the complainant company.

Q. You mean the stable was used in connection with it; and the brick building was used, though, in connection with the coal gas plant, was it not?

A. I mean the entire facilities of the complainant company on that lot were used in part by the departments I have named.

Q. The company sold it in 1917, July 10th?

A. I have testified to it.

The Master: The record shows. The question is not allowed.

Q. Is that the date that the title passed?

A. It is.

Q. Lot 1, Block 1704. What was that used for? That was used up to June 26, 1912—what for?

A. I described it yesterday and again this morning.

Q. We have not reached it yet?

A. Oh, yes we have. 23852

Q. What was it used for?

The Master: The question is not allowed.

Mr. Chambers: Exception. What were the dimensions of it?

The Witness: 201 feet 10 inches on First Avenue by 107 feet deep.

Q. And title passed on June 26, 1912?

A. It did.

Q. The items set forth on Exhibit 367, where did you get your information from as to the various items withdrawn?

A. Referring now to which particular item?

Q. Well, take the very first one, well and boiler house burned in 1907? 23853

The Master: Withdrawn in 1907.

Mr. Chambers: I don't know yet what that means.

Q. Where did you get your information from?

A. What information shown on Exhibit 367 are you asking me about?

The Master: As to the first item.

The Witness: The book withdrawals of $1,655?

Q. Yes.

A. From the Rowland inventory, page 2776, Item 39.

Q. That is where you got the information from that it was withdrawn from the Rowland appraisal?

A. No, at the time—

Q. I am asking you where you got your information from that it was withdrawn?

A. Why, I wrote the memorandum at the time the withdrawal was made.

Q. When was it withdrawn, what date?

23855 A. In 1907.

Q. What time in 1907?

A. I don't recall.

Q. It was actually withdrawn in 1907, that well and boiler house?

A. It was.

The Master: Was the use of it discontinued in 1907?

The Witness: It was withdrawn immediately prior; I remember that.

Q. You don't know when the fire was?

A. As I recall, it was in the early part. The old car barn there at 14th Street and Avenue B burned, 23856 and the fire spread to this property. I remember it was rather a stormy winter night.

Mr. O'Brien: Oh, the snow is falling now.

The Master: Mr. O'Brien's time for cross-examination has not yet arrived, so you need not answer any quetsions by him.

Q. Was it insured?

A. This well and boiler house was carried on our insurance schedule, yes.

Q. And you received insurance on it, I take it?

A. It was carried in the insurance fund. I had nothing to do with the adjustment.

Q. Whom did you send your information to that it was withdrawn? You said you made the memorandum?

A. The memorandum I wrote went to the accounting department.

Q. Did you put the amount on it, or anything, or just say, "Well and boiler house withdrawn"?

A. My memorandum did contain the amount of $1,655, which was fixed as the book value after a conference between myself and Mr. W. G. Morris, who was then the company's chief clerk.

Q. You and he agreed that that was the book value? 23858

A. At that time, yes, we did, and that figure was set forth from my memorandum.

Q. Where did you get your information that this was withdrawn, who reported to you?

A. Why, I learned when I got down to the office that morning that there had been this big fire in the car barn, and I went over to see what had happened, and it didn't take me very long to find out.

Q. How did you know that this was the same well and boiler that Rowland had in mind?

A. Because on page 2776 of the Rowland appraisal he describes the premises in which it was located.

Q. In what premises were these located, the 14th 23859
Street station?

A. A piece of property pertaining to the 14th Street station.

Q. So you concluded that that was the well and boiler?

A. It required no conclusion, it was on the face of it.

Mr. O'Brien: On the face of what?

Q. Now, take the storage shed on that same date, and another 50 horsepower Rowland boiler, why couldn't you identify those?

A. You are referring to the item storage shed T, withdrawn 1911?

Q. Yes, and storage shed U, and storage shed V, and 50 horsepower Rowland boiler. None of those you could identify, could you?

A. Why, yes, it gives the identification of the Rowland boiler as being in 1902 General Ledger, Folio 32.

Q. Why is this column headed, "Items not identified"?

A. Items not identified in the Court's valuation. Read the caption on the page.

23861 Q. That is not so, is it, quite? The second column is "Items Identified under the Court Valuation"?

A. Yes, book value of items identified in the Court valuation.

Q. And this last column means that you could not identify it in the Court valuation?

A. That is what it means.

Q. Although it might have been there?

A. Or else covered by—

Q. No, I am asking you, it might be there, you couldn't identify it although it might be there?

A. It is not described there. They are not described there.

23862 Q. Then that really means not described there instead of items not identified, is that what you say it means, that last column?

A. I say it means both. Referring to these particular items it means that they are not described there, apparently.

Q. Well, the 50 horsepower boiler was found in the 1902 ledger.

A. Yes.

Q. Why wasn't that described in the Rowland report?

A. In the Rowland appraisal you are talking about?

Q. Yes.

A. Because it was not put in until 1902, and Rowland made his appraisal in 1884. That is very simple.

Q. Is that what those figures mean, that they include nothing upon which money had not spent at the time he made his appraisal?

A. Which figures?

Q. The last column?

A. The last column referring to the caption reads, book value of items not identified—

Q. I am asking you if all these items in the last column— you said you checked this—include only 23864
items upon which money had not been spent when Rowland made his appraisal?

A. No.

Q. That is not so?

A. No.

Q. They cover items upon which money was spent at the time he made his appraisal?

A. Yes, it includes all items of property in Mayer's inventory, regardless of whether it was in the Rowland inventory or not.

Q. What do these dates mean, 1907, 1911, 1912?

A. The year in which the withdrawal was made.

Q. On the books, or actually in the field? 23865

A. Why, it means essentially here on the books, and I should say—

Q. Well, all right, on the books. When was that well and boiler actually withdrawn?

The Master: That has been answered. That is the fire, isn't it?

The Witness: Yes.

Q. When were the holders on page 4, where the date is 1916, when were those holders withdrawn?

Mr. Ransom: I object to the question.

The Master: By that you mean what? When was the use of them discontinued?

Mr. Chambers: In the field, yes.

The Master: When was the use discontinued as distinguished from withdrawn on the books.

Mr. Chambers: Yes.

The Master: Can you tell us that?

The Witness: In 1916.

Q. When were the boilers and fixtures dismantled, mentioned there in 1916? in 1916?

A. That was part of that cleaning up at the time we took out those holders. That boiler related to those holders.

23867 Q. Answer that question.

A. I have no recollection of the removal other than its being at that time. My memory does not go to any other date.

Q. Can you tell me then when that boiler and fixtures were actually dismantled?

A. Other than its being at 1916, at the time the holders were dismantled?

Q. Now, there are many items here, or pieces of property, where the date is set forth from the left-hand side, where it appears that these pieces of property were withdrawn perhaps months and years before that date. Is that so?

23868 A. From what does it appear? I don't get where it appears on the exhibit.

Q. The books of the company—those on the left-hand you say are the dates when the entry was made in the books of the company?

A. Yes.

Q. There are many items here, are there not, where the plant actually ceased to be used and was withdrawn from service prior to these dates on the left-hand side, or prior to the book entry?

A. When you say when it was actually retired, you mean that it was physically retired?

Q. Yes.

A. I should not say—I don't know what length of time you mean when you say before.

Q. Prior to that year?

A. It might refer to the withdrawal of a boiler—

Q. Now you are fencing with me. Prior to that year, prior to the year given on the left here?

A. That might merely represent the difference between December 31st of a year and January 1st, which would be 24 hours apart.

Q. You say there are none with a difference more than that? 23870

A. I did not say there were none.

Q. Are there?

A. I say there are doubtless many cases there where the physical withdrawal may have occurred from one hour to a greater length of time before the entry in the books.

Mr. O'Brien: I move to strike out the witness's answer as not being responsive.

The Master: Motion denied.

The Witness: I had not finished my answer.

Q. What do you mean by a greater length of time?

A. I had not finished my answer.

The Master: Finish it. 23871

A. There are other entries here where I am quite sure the property was physically standing when the withdrawal was made on the books.

Q. What do you mean by a greater length of time when you say from an hour to a greater length of time? I am asking you what you mean by from an hour to a greater length of time, what do you mean by a greater length of time? Ten years?

A. No.

Q. What do you mean by it?

A. It might be a month.

Q. Never more than a month?

A. I didn't say so.

Q. How much greater?

A. I would not undertake to state without searching the company's books.

The Master: What would you say as to whether, so far as you personally are concerned, you at any time made a report of property withdrawn upon which a journal entry was based, which finally got into the ledger account, say a year or two after the property had been dismantled and sold?

23873

A. I think I would have to study over every item here, and go through the company's books before I could answer that.

The Master: Can you recall any occasion when that was done?

The Witness: It would not be anything notable, your Honor, that is fixed in my mind.

Q. When was the 44th Street plant—when did you actually cease to use it?

A. Why, the title passed from us August 1, 1913.

Q. Find it in there, will you? Show Mr. Gilbert where that appears as having been withdrawn, on that exhibit or any other exhibit or any other exhibit?

23874

A. It is not withdrawn there. I have already so testified.

Q. That is six years ago, and you are still carrying it?

A. It is in litigation.

Q. You ceased to use it on that date you gave me, 1913?

A. Or thereabouts.

The Master: Mr. Chambers, do you still need these tax maps here?

Mr. Chambers: No, not now.

The Master: Do you, Mr. O'Brien?

Mr. O'Brien: I don't think so.

The Master: All right, they may go.

Mr. O'Brien: Before they go I would like to ask the witness another question.

By Mr. O'Brien:

Q. There is a plot shown there on Pleasant Avenue between 110th and 111th Streets. Is that east of the Standard Company's building? I don't recall just where Pleasant Avenue runs through there?

A. Pleasant Avenue runs through between Block 1704 and Block 1712. The complainant company owns 23876
on both sides of Pleasant Avenue in that block.

Q. Where is the Standard's building?

A. On First Avenue between 110th and 111th Street. It is on the westerly 111 feet of Block 1704.

Q. Is Pleasant Avenue east of First Avenue?

A. It is.

Q. That plot where the Standard building is located runs all the way to the river?

A. No, Pleasant Avenue intervenes between it and Block 1712, which is the bulkhead property.

Q. You mean Pleasant Avenue is close to the river there?

A. It is the exterior street at that point. The phys- 23877
ical bulkhead in that block is the easterly line of Pleasant Avenue on the east. It was built right on the easterly line of Pleasant Avenue.

Q. This plot does not physically exist, it is only a map plot, this gore that you have described as belonging to the company?

A. Block 1712, Lot 2, is land under water which the company has a right to fill in out to the bulkhead line.

Mr. O'Brien: That was about all that I wanted to bring out.

By Mr. Chambers:

Q. Take page 8 of Exhibit 367, under 1913, you found, did you not, an item "Relief Holders, 1 and 2, dismantled, estimate by company's engineers"?

A. I did.

Q. Why weren't you able to identify that with Rowland's valuation, those relief holders?

A. It does not refer—the column does not refer to identification in Rowland's appraisal, but in the Court value of 1906.

Q. Why weren't you able to identify them with the
23879 Court valuation?

A. Because we were not withdrawing the holders as an entirety. The Court valuation covered the holders as an entirety, and we were not able to separate out of the Court value the part that we were withdrawing.

Q. So that a part of them then is in the Court valuation in that column Court valuation?

A. In the Court value, the value of the holders as an entirety stands out, but we could not pick out and separate out the pipe that we were withdrawing.

Q. So that part of that $70,463.78 is the column in your Court valuation, the part that you could not
23880 pick out, isn't it?

A. No, it is still in the plant, it is still in property. We rebuilt the holders, that is what we did. We rebuilt the holders, and we withdrew $70,463.78 as representing the portion that we dismantled and replaced.

Q. How much of that $70,463.78 is in the Court valuation?

A. All of it.

Q. All of it is in the Court valuation?

A. Yes. I have to estimate the value of the property being dismantled and replaced.

Q. Will you please look at page 7 of this same exhibit 367?

A. I have it.

Q. Down at the bottom you will find an item, "Record, page 1475, $56,320," and in the next column you find $6,797.08. Now, of the valuation by the Court you are only able to identify $6,797.08 of it?

A. On the books.

Q. Were you able to identify all of the property included in the $56,320 in your $6,797.08?

A. I was able to account for the difference. 23882

Q. The same property?

A. The same property, and I was able to account for the difference.

Q. In other words, your valuation of $6,797.08 is the book cost?

A. Is book cost.

Q. Is it?

A. Yes. Rowland described the building as unused, and put it down at a nominal value of $5,000. He said—just exactly what he did. The complainant company acquired the use of the building and put it to a very good purpose.

Mr. O'Brien: I move to strike that out, your 23883
Honor.

The Master: Motion denied.

Q. So that the Court placed a valuation—Rowland valued it at $5,000 and the Court valued it at over $56,000?

A. Rowland said that he found it unused, and so he would put on it a nominal value of $5,000, he does not say that this is the value of the building, or that that is what he valued the building at structurally.

Q. And the Court found a value of $56,320?

A. That is so.

Q. Which you are using now in your statement?

A. Yes.

Q. Book value in the two last columns means book cost, doesn't it? A. It is synonomous with book cost?

A. Yes, book cost.

Q. There is no credit here at all, is there, for land that was sold or used, in this exhibit?

Mr. Ransom: Objected to as not within the scope of cross-examination of this witness.

The Master: I will allow it.

23885 Mr. Ransom: Exception.

A. The exhibit about which you are interrogating me, 367, relates to manufacturing plant and equipment only, as shown by the designation on the cover, and does not relate to the land at all.

Q. Did you make any report or put in any figures along with the rest of your report as to the land that had been retired or ceased to be used when you made your reports?

A. I have in those cases where so doing would correspond to the circumstances that obtained in the particular case.

Q. And did you report book cost and then what

23886 the property sold for?

A. I would work out with the Accounting Department the book value of the land. They did not need information from me as to the selling price.

Q. That is, you worked out the book cost of the land?

A. Yes.

Q. Who gave that to them?

A. I did. I would work it out in connection with some representative of the Accounting Department.

Q. On page 10 of this exhibit, the item of $7,657.45,

are you the one who made the estimate, "By Company's Engineer"?

A. I was.

Q. And wherever it says, "Estimate by Company's Engineer," in this exhibit, it means that you made the estimate?

A. I should believe it meant me without exception.

Q. Well, take this particular instance now—

The Master: Well, it may be that some other engineer had helped.

The Witness: Hardly. There might, if you look through the books you might dig up one in- 23888
stance.

The Master: You think substantially all of them were your estimates?

The Witness: Yes.

The Master: And they come under your jurisdiction, do they, generally?

The Witness: Well, that was generally my work. It is my work and has been for some years back, to work in conjunction with the Accounting Department in the identifying of book cost of property being withdrawn.

Q. Now, where did you get your—was that a building and apparatus that you made an estimate 23889
of?

The Master: On page 10.

Mr. Chambers: "Other Buildings." Were there more than one building?

A. There were two or three small buildings and some accessory apparatus there. I do not now recall, without a memorandum, the details of the amount of $7,657.45. I do not recollect the details of what entered into it.

Q. Why was it you could not find the book cost of those buildings and apparatus?

23890 Herbert W. Aldrich, Cross.

A. Because on the books it was grouped with other property not being withdrawn.

Q. Then that very item may be in the Court's valuation somewhere?

A. It is.

Q. It is over in that first column?

A. Yes.

The Master: Well, it is not in the first column of this exhibit.

Mr. Ransom: The Court's valuation is shown and book value both.

23891 The Witness: Meaning the heading of the column?

The Master: Yes.

The Witness: It is in the Court's valuation of the 42 nd Street plant. It included the property that was withdrawn with this $7,657.48.

The Master: But what I want to get at, and the impression that I think Mr Chambers is trying to make on me is that there is a duplication of the items, that this item is found in the first column.

The Witness: It is not.

Q. Well, you just said it was a minute ago?

23892 A. I understood you to mean in the Court's valuation. I may not have understood your question. If it is read back to me.

The Master: The question ten or fifteen minutes ago that you asked him, the same question, I understood the witness's answer to mean just what he says it means now, although I got the impression that you thought it meant a duplication. I did not stress it at that point, because I knew better.

Mr. Chambers: I did get the impression he said it was in the Court's valuation column.

The Witness: You did not use the word "column." You said "Court's valuation," which is a different thing.

The Master: Can't you cover all this by some general questions?

Q. How do you know it was not in the Court's valuation column, althought it is in that column of Court valuation, this very property?

A. This very property is not in the column headed "Court valuation."

Q. How do you know that?

A. Why, I can look at it and see, Sheet 10, and 23894
it is not there.

The Master: I am going to limit the cross-examination, Mr. Chambers.

Mr. Chambers: Why, your Honor does all of them, you limit them all. I expected it.

The Master: Yes. You can ask the general questions challenging this witness's statement that these figures are accurate and that he knows about them. I have let you ask a series of questions picking out items here and there to test them, and I think I have let you take up about as many items as I am going to.

Mr. Chambers: You always limit us and you 23895
always control our method of cross-examination.

The Master: I am going to, I am going to finish this case within some reasonable period.

Mr. Chambers: You don't give us an opportunity to really cross-examine where we think we ought to.

The Master: That is where you and I differ. I sat here patiently listening to a lot of drivel until I think I have gone far enough.

Mr. O'Brien: Your Honor, we closed with this witness once and over our objection he has

been allowed to come back on the direct and open up a new line of testimony.

The Master: Well, that is terrible.

Mr. O'Brien: He has come in here to support and prop up the weaknesses of the witness Teele.

The Master: Well, it may be a very wise thing for them to do.

Mr. O'Brien: And that is done over our objection, and I submit it opens up a new line.

The Master: If you think I am going to dispose of this case by making any hard and fast
23897 rules about order of proof and because a witness has gone off he cannot come back or because something ought to be direct and it has come back in rebuttal or something else, you are very much mistaken. This case is in equity, and I am going to dig down into the truth of it, and I am going to find out down there how much it costs to make and distribute gas, and if necessary, I am going to find out what the basis is for a rate. Now, let's understand it once for all, and there isn't going to be any of this technical procedure that we find in the state courts.

Mr. O'Brien: What your Honor has just said
23898 affords me the best reason and argument in the world for the point I am making, and that is that where unannounced they slip in here when we are going along a certain line of proof, this witness who finished on the stand and whose cross-examination by us was finished, to go into an entirely new matter and then in the guise of that continued direct-examination, they hand him some blanket questions that cover the whole of this situation as to withdrawals and renewals, I submit, your Honor, that the cross-examination should not be hedged around and limited.

The Master: Well, I will hedge it just the same. Mr. Chambers, have you any more questions?

Q. On page 13, 1909, air condenser dismantled, 1893, General Electric, the item of $11,075.50, you were not able to find whether the Court included that in its valuation?

The Master: I won't allow the question.

Q. Was that included in the Court's valuation?

The Master: I will not allow the question.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Q. When was that actually discontinued? 23900

The Master: I will not allow that question.

Q. On page 24 of this same exhibit you have withdrawn from service a new tank and holder, billed to the Standard Gas Light Company, $18,895.12. Was that ever any part of the plant of the Consolidated Gas Company?

A. You mean the finished holder?

Q. Yes.

A. No.

Q. It was built by the Standard Gas Light Company, was it not?

A. The work was begun by the Consolidated Gas Company and afterwards turned over to the Standard 23901
Gas Light Company after the work was first initiated.

Q. How could that be plant of the Consolidated Gas Company withdrawn from service?

A. Because there had been charges against construction.

Q. It was never used, was it, by the Consolidated Gas Company?

The Master: The question is not allowed.

Mr. Chambers: Exception.

A. It was an accounting adjustment between the two companies.

Q. On page 28 how do you make the items preliminary work a withdrawal from service by the Consolidated Gas Company?

A. What is the question?

Q. On page 28 of this same exhibit, the item "Preliminary Work," how can that possibly be withdrawal of plant from service?

A. The preliminary work related to preparing the site of the Kingsbridge holder station for the construction work and such preliminary work, and test borings were a part of the actual construction.

23903 The Master: Why wasn't it withdrawn?

The Witness: I don't recall the circumstances under which that withdrawal was made.

Q. You gave an amount here for it, though?

A. I should believe I worked with the Accounting Department in picking out those figures and probably wrote the memorandum.

Q. How was the test boring a withdrawal of plant?

A. Well, the purpose of the test borings was to discover the strata upon which we had to put the foundations of the holder and building.

Q. I do not ask you that; I ask you how a test boring could possibly be a withdrawal of any of the

23904 plant?

A. Because the boring is a part of the foundation construction; it enters into the construction of the foundation.

Q. The foundation has not been withdrawn?

A. The foundation has not been, no.

Q. How could the hole, the boring, be a withdrawal of plant?

A. This was exploration work, and the exploration work is part of the construction work.

Q. You could call hole boring a piece of plant?

A. It enters into the plant that is built upon it, yes—part of the actual costs.

Q. On the last page 29, services of engineers, billed to other companies. You call that plant withdrawn, too, do you?

Mr. Ransom: I object to the question. That was gone into fully; it is a bookkeeping matter.

The Master: I will let the witness say: I will let the witness explain it, if he can.

A. It was part of plant, because the services of the engineers were rendered in connection with plant construction.

Q. Was the plant withdrawn for which those services were rendered? 23906

A. No, it is billed to other companies. It is an inner company adjustment, as it shows.

Q. In fact the plant was never used by the Consolidated for which the services of those engineers were rendered, was it?

A. I would not answer that question before I considered every item of plant as to which those services related. Then I would answer the question.

Q. What items of plant do they relate to?

A. I have not the company's accounting department before me, and I could not answer unless I had.

Q. Does any of it relate to the plant covered by this exhibit, and the preceding pages—the plant or plants? 23907

A. I cannot answer that question without an individual study of the items.

Q. Does any of it relate to the plant mentioned in the preceding pages of this schedule?

A. I would have to study that.

By the Master:

Q. You do not know at this time, do you?

A. Not without a consideration of the item.

Q. Can you tell us now while you are up on the stand?

A. Not very well.

Q. Can you tell us at all?

A. I could, yes.

Q. I mean while you are on the stand. You say you cannot tell us very well; can you tell us all without getting the records?

A. If I had time to study over the items and give it some thought I might arrive at a conclusion regarding particular items.

By Mr. Chambers:

Q. Did you approve this page and give your O K to the last two pages, 28 and 29?

23910 A. You mean when the withdrawal was made?

The Master: When the schedule was made.

Q. No, you said the schedule was all correct and you checked it?

A. Yes.

Q. Is that so?

A. Yes.

Q. You checked these two pages?

A. I did.

Q. And included those in your statement when you said the exhibit was correct?

A. I did.

Q. You cannot tell now why it is included?

23909 A. Why it is included?

Q. Yes, we ask if you can tell?

A. Oh, yes, I can tell.

Q. Why was it included?

A. Because these services of engineers was rendered in connection with property constructed for other companies.

Q. Yet you do not know what property it was, or where it was?

A. I say if I should sit down and study out each project that we have carried out for the affiliated companies, why, I could frame my answer.

Q. All engineering that you rendered to any other companies is included in here as a withdrawal?

A. All the services of the engineers whose time is carried into this engineering account only.

Q. Is yours carried into that?

A. Mine it not in this withdrawal, I don't think.

Q. What engineers' services are in it?

A. This withdrawal of 1916, that $163,999.76. That one item might include something for me.

Q. Some of your salary, you mean, goes in there?

A. Yes, I say it might.

Q. That the Consolidated pays you? 23912

The Master: Let him answer the question.

Q. Some of your salary?

A. I say if I analyzed the item it might include some of my salary. I know the others do not.

Q. What items do they include?

Mr. Ransom: Objected to. That has been gone into before.

The Master: I will sustain the objection on the ground that I do not think it is useful.

Q. These questions I have been asking you relate to the $202,035.46, you so understood?

A. I understood your questions as relating to those, but all of my answers did not relate to the full 23913 amount.

Q. But all except the answer where you specified the amount of $163,999.76 did?

A. Yes.

Q. The Exhibit 185, additions. You checked this whole exhibit carefully, did you?

Mr. Ransom: The witness was interrogated about this at very great length.

The Master: I will allow the question.

Mr. Chambers: At very great length and when?

The Master: Please, Mr. Chambers, you have asked a question.

A. I verified all of the items, but I did not foot up the columns and carry the figures forward.

Q. These amounts, did you make those up?

The Master: What?

Q. These amounts, did you make those up?

The Master: Why, I understand they are all book entries, are they not—all book cost?

Mr. Chambers: That is what I want to find out, what he knows about it.

23915 The Master: They are additions.

Q. You have not any knowledge about these amounts, have you, except what is shown on the books?

A. About these amounts?

Q. Yes.

A. Oh, yes; I spent a lot of the money; a very large part of this I spent.

Q. What knowledge have you about it?

A. What is that?

Q. What knowledge have you about it?

A. Well, which ones?

Mr. Ransom: Objected to. They went over
23916 item after item, about his relation to those matters in Exhibit 185, four months ago. That was why it was marked at that time.

The Master: I must confess that I do not recall it.

Mr. Ransom: That was marked 185.

The Master: For identification.

Mr. O'Brien: That was some preliminary examination, your Honor. It is too important to have it passed over with blanket questions here, when they recall the witness at the tail end.

Mr. Chambers: Will you please answer the question?

The Master: There was not any question.

Mr. Chambers: I asked him what he had to do with those amounts.

The Master: He said "which amounts?" Give him a few instances.

Q. The buildings on the second page, of the 14th Street station.

Mr. Ransom: I specifically object to that, because the 14th Street station items were all gone over item by item.

The Master: I am going to allow a few questions. Take the first item. 23918

A. The item of buildings, he said. That was $6,074.57; and 1917, $2,814.27, that relates to the construction of a boiler house that I have described several times in my testimony here.

The Master: I remember it.

Q. And did you give the accounting department these expenditures?

The Master: I will not allow the question.

Mr. Chambers: Exception.

Q. What did you have to do with these amounts that you have just mentioned?

The Master: I will not allow the question. My recollection now is, as I look at that exhibit, 23919 that Mr. Aldrich testified quite fully and extensively that he had charge of these expenditures, that the expenditures for additions to plant were as set forth in this schedule, and he was cross-examined to some extent about it.

Q. Take the items of superintendence, on page 2.

A. I was cross-examined at great length about that item when I appeared as a witness last summer.

The Master: What is the question, Mr. Chambers?

Mr. O'Brien: I think I object to the parrot-like talk of the witness volunteered in this record.

The Master: What is the question?

Q. What superintendence was it?

The Master: The question is not allowed.

Mr. Chambers: Exception.

The Master: Have you any questions to ask, Mr. O'Brien?

Mr. O'Brien: I have, yes, your Honor.

The Master: I have been waiting about five minutes for Mr. Chambers to ask another question.

23921

Mr. Chambers: I am trying to find one. You shut me off.

The Master: If you cannot find one in five minutes, you probably have not any more to ask.

Mr. Chambers: Yes, I have.

The Master: Then you better ask them.

Mr. O'Brien: I may say to your Honor that we have an important conference on this afternoon.

The Master: Make it after four o'clock, just as I am making my conferences after four o'clock.

23922

Mr. O'Brien: This conference—

The Master: You may as well stop these application for adjournments day after day, that you know I will not give. I have told you over and over again at great inconvenience to myself I am running these hearings until four o'clock. I am attending to my private affairs after four o'clock, and you gentlemen will have to accommodate yourselves to that and stop these applications. Have you got a question, Mr. Chambers?

Mr. Chambers: Yes.

The Master: Then ask it.

Mr. O'Brien: Your Honor, that we may finish this, I ask that I be—

The Master: No, I want you to ask a question and ask it right away, I want Mr. O'Brien to stop.

Mr. O'Brien: I want an exception noted to—

The Master: Your exception is noted. Now, stop, or I will send Mr. Aldrich off the stand.

Mr. O'Brien: My exception was to your Honor denying us the right to have the afternoon for an important conference in the case. 23924

The Master: I am still waiting for the question, Mr. Chambers.

Mr. Chambers: I know you are.

The Master: You have had several more minutes now.

Mr. Chambers: You have shut off our cross-examination.

The Master: You ought to know that I would shut it off.

Mr. Chambers: You are shutting them all off.

The Master: Do you want to ask a question or don't you?

Mr. Chambers: Yes, I do. 23925

The Master: Then you better do it.

Mr. Chambers: Well the time has arrived for adjournment.

The Master: I told you to ask a question.

Q. Take the last page, Mr. Aldrich, "Engineering and Superintendence." Whose engineering is included in the expenses for engineering?

The Master: The question is not allowed.

Mr. Chambers: Exception.

Q. Whose expenses or what draftsmen are included in the various expenditures under the heading "Draftsmen"?

The Master: The question is not allowed.

Mr. Chambers: Exception.

Q. What is included in the item "New Main Records"?

The Master: The question is not allowed. I assume that counsel and the corps of experts have accomplished something in the last six months in examining the Consolidated records and this exhibit. Cross-examination is not intended to be for the purpose of asking fishing questions; it is intended to bring out a point.

23927 Q. The item "Appropriations to Employees."

The Master: Same ruling.

Mr. Chambers: Exception.

The Master: If you have any question that will test this witness's statement or the truthfulness of his statement that he made that tabulation, that he compared it with the items, that as to many of them he himself expended the money, or anything that will show he is not telling the truth or that he does not know what he is talking about, I will let you ask it.

Mr. Chambers: I except.

23928 Recess.

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Afternoon session.

The Master: Have you any questions, Major Clark?

Mr. Clark: No, sir.

CROSS-EXAMINATION CONTINUED BY MR. CHAMBERS:

Q. Mr. Aldrich, did you also approve Exhibit 376?

A. 376—

Q. Check it up, I mean?

A. I am not able immediately to determine the difference between 376 and 367.

Q. I did not ask you to determine the difference, I asked you if you checked that schedule up? That is all I am asking you.

A. I would say that I am familiar with and have verified the items as far as they correspond to those in Exhibit 367.

Q. But in so far as they do not correspond you did not check them?

A. I would want to consider them individually and 23930
pass on each one after such consideration.

Q. I take it, you never saw that exhibit before?

A. Yes, I think I may have seen it, but I have got to have the differences clear in my mind. I know that there are two exhibits that are substantially similar, and—

Q. You cannot tell me, then, whether you checked it up, or not?

A. I will say that I have verified the individual items and as far as they correspond to Exhibit 367 I have verified them, and as far as it is different therefrom I would want to consider each one individually. 23931

The Master: You have said that twice, now.

Q. You took this one and the other, and just checked the items that agreed, is that it?

Mr. Ransom: I object to that.

The Master: What is the question?

Mr. Chambers: I say, he took the one I handed him just now, and 367, and checked the ones that agreed.

The Master: No, he doesn't say that.

Mr. Ransom: He says he checked 367.

The Master: Next question, Mr. Chambers. I will sustain the objection.

Mr. Chambers: Exception.

Q. Do you know what the difference is?

Mr. Ransom: Objected to.

The Master: No, I will let him answer that.

A. As I recall the difference is that there is a difference in the form of presenting the same facts.

Q. But all the property is just the same in the two exhibits?

A. I think it is: possibly there may be an account-
23933 ing adjustment represented in one which is not in the other.

Q. With that exception are they the same?

Mr. Ransom: I object to that as not within the scope of the cross-examination of this witness. He was not interrogated about 376. 376 is made up on a basis concerning which he has not been interrogated.

The Master: I sustain the objection. I did not interfere with Mr. Chambers' questions because I wanted him to get any advantage there might be in trying to trap the witness in making a statement. He apparently did not succeed in
23934 trapping the witness, and there is nothing more useful in that kind of examination.

Mr. Chambers: I was not trying to trap him.

The Master: Oh, yes, you were.

Mr. Chambers: I say I was not trying to trap him.

The Master: Oh, yes, you were.

Mr. Chambers: I wanted to know whether he approved this.

The Master: I say you were trying to trap him.

Mr. Chambers: I except to the characterization.

Q. That is the best statement you can give me?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception: I cannot see why your Honor characterizes that as trying to trap him. I want to know if he approved this exhibit.

Q. Does this Exhibit 376 correctly represent all of the plant equipment withdrawn from service?

Mr. Ransom: Objected to. He has not been asked to testify about 376, he has not said anything about it.

The Master: You can show Exhibit 376 to 23936
the witness, and I shall direct the witness's attention to the difference between 376 and 367, so that he will know perfectly what he is testifying about. Then you can ask him that question. I will not permit any wide questions that seek to trap a witness.

By the Master:

Q. Mr. Aldrich, as I recall it—take page 3—you will find some items in there that are omitted from 367, well and boiler house, 2 Scotch marine boilers, coal handling apparatus. Rather, there are some put in here that are not on the other, wasn't that it?

Mr. Ransom: There are some on 376 that are 23937
not on 367.

The Master: There were some items in here that had been out of use, as I recall it, before the former trial, so that they were not in the Mayer appraisal, and Mr. Teele's testimony is that he first started to put them in here, and found that they should not be in, and then prepared 367 by leaving out of 367 everything that was not included in the Mayer appraisal.

Mr. Ransom: The complainant changed its theory of the case on the Master's ruling.

The Master: Whatever the reason was, that is the condition at any rate. 376 includes items that were not in the Mayer appraisal, and disused.

Q. Do you recall that schedule being prepared?

A. I do.

Q. Did you check up these items in the original schedule of 376?

A. I checked up the amount, but as to any use of them, any improper use of them from an accounting standpoint, I did not enter into that. As to the amount of the withdrawal I did.

23939 Q. And the date of the withdrawal?

A. I did.

Mr. O'Brien: Did you say improper use of them?

The Master: Don't answer that question.

Q. So that as to the items appearing on 376, in so far as they say that, for instance in 1912, old fence around storage yard demolished, etc., you checked those items?

A. I did, and I provided the memorandum for the withdrawal on that fence.

By Mr. Chambers:

Q. Are all these pieces of plant set forth on Ex-

23940 hibit 376 withdrawn from service?

A. They are.

Q. And withdrawn on the dates when they are set forth in Exhibit 376?

A. I would have to consider the items individually to answer that question, beyond saying that in general—I assume you mean the physical withdrawal?

Q. Yes.

A. The physical withdrawal would correspond substantially with the book withdrawal.

Q. In all instances?

A. That is a general answer to a general question.

To give a specific answer to each item I would have to consider each one, and the particular facts obtaining in that case separately.

Q. Then you don't know whether they were actually withdrawn, these different pieces of plant on 376?

A. I know the history of every item there. If you ask me a general question I have to give you a general answer. If you will ask me a specific question I will give you a specific answer.

Q. Page 16 of Exhibit 376, 18th Street plant—when was the 1910 tank and holder withdrawn? Was it in 1910? 23942

Mr. Ransom: I object to the question as not within the scope of cross-examination.

The Master: I will allow it.

Mr. Ransom: Exception.

A. You mean physically withdrawn?

Q. Yes.

A. October 17, 1902, in a condemnation proceeding, the matter remaining in litigation until 1910.

Q. So that it was physically withdrawn in 1902?

A. Yes, and the litigation continued on.

Q. And how about the 1913 plant taken by the city, set forth on page 16 of Exhibit 376? 23943

A. That plant ceased to operate on September 8, 1904, that it ceased to operate as a coal gas manufacturing plant. It continued to operate as a gas distributing station, but the matter continued in litigation until 1913.

Q. Now, take the very next item, portion of plant dismantled and withdrawn. When did that cease to be actually used, actually physically ceased to be used?

A. In that $610,000 there is grouped property to which the answer would vary. The answer to a

part of it would be the same as given for a previous item.

Q. That is as to part of it it was physically withdrawn in 1902 or 1904?

A. 1904, the matter continuing in litigation. As to some other part of it the answer would be about the time of the withdrawal in 1914.

Q. How much of that $610,000?

A. Well, I haven't the books before me now, I haven't my memorandum.

Q. You cannot tell me which part of it relates to
23945 1904 and which part of it relates to 1914?

A. No, not without a memorandum before me.

Q. How about the next one, 1916, "Plant Sold to the Merchant Refrigerating Company"?

Mr. Ransom: All these questions are about the 18th Street station.

A. The answer regarding that is that it was used in part up to 1914, and in part was not used after 1914 at the time the condemnation proceeding began, and the matter went into litigation.

Q. Then it all ceased to be physically used in 1914?

A. It did.

23946 Q. When did the next item, "Plant on property sold to the New York State Terminal and Realty Company," actually cease to be used $133,446.95?

Mr. Ransom: He has already testified to that once today.

A. On January 1, 1915.

Q. So this date, 1917, is when it was entered on the books apparently, is it, as to that item?

A. I would not say the date is January 1st. The year is 1907.

Q. When it was entered on the books?

A. Yes.

Q. How was that plant carried between the time when it ceased to be used and when it appeared on the books in this year. For instance, take this one in 1913 for $749,000, that piece of plant. It ceased to be used in 1904, a part of it. Where was that carried and what was done with it between the interim between the time when it ceased to be used and when it found its way on the books in 1913?

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Chambers: Exception.

Q. What do you mean when you say as to these 23848
different items I have just asked you about, that they were in litigation?

A. I mean that the city had instituted three condemnation proceedings involving that plant, and they extended over a period of several years, and when the litigation was finally concluded in two parts the withdrawals were made, the matter then being settled.

Q. And the city paid interest from the early date you mentioned, 1904, or don't you know about that?

A. I do.

Q. Did they?

A. They paid interest.

Q. From the date when you said it ceased to be 23949
used?

A. They paid interest on the award; not on these sums of money.

Q. Now, the interest on awards, say from 1904, take that particular one in 1913 that ceased to be used in 1904, the city paid interest on that portion of the plant that was condemned from 1904?

Mr. Ransom: I object to that, it has been fully gone into both on direct and cross-examination of Mr. Brundage. Mr. Brundage gave the detail figures of what the award was, how much interest was paid and so on.

A. Your question relates to the item of $749,000 odd, does it?

Q. Yes, so much of it as was withdrawn in 1904?

A. The answer is yes.

Mr. Chambers: That is all, with the exception of those questions I was not allowed to ask.

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Aldrich, did you have conversations with Judge Ransom or Mr. Goetz concerning the testi-
23951 mony that you have given since you have been recalled to the stand?

A. I do not recall anything considerable, no.

Q. Did you have any conversations with them concerning your testimony?

A. I would not describe them as conversations.

Q. Did you have any discussion with them, any talk with them, concerning the testimony that you were to give here?

A. I would not describe them as talks, no.

Q. What did you have?

A. Why, he told me I was going to be called back.

23952 Q. What did he tell you?

A. He did not tell me about what I was to testify. I had no knowledge from him what questions he was going to ask me when I came back on this chair.

Q. Who did discuss with you the scope of your testimony?

Mr. Ransom: Exception.

The Master: I will allow it.

Mr. Ransom: Exception.

The Witness: I did not know the scope.

Q. Who did discuss with you this testimony?

A. The part of my testimony that I discussed was

when I called Mr. Vilas' attention to the condition of the record regarding the differences between the tax map and Exhibit 178. I took the initiative in the matter and called his attention to it.

Q. Did you take it up first with Mr. Carter?

A. As soon as I saw the shape the record was getting into, I went to Mr. Carter. That was back when the first deputy commissioners appeared on the stand.

Q. Have you been following the testimony in this case?

A. So far as it was a matter of immediate inter- 23954
est to me.

Q. Have you followed the testimony in this case?

A. So far as it was a matter of immediate interest to me.

Q. Have you read all of the testimony in this case?

A. I have not.

Q. Did Mr. Carter turn over to you any of the testimony and tell you to go over it?

A. No.

Q. Who did tell you to take it up?

A. No one.

Q. Did Judge Ransom tell you he was going to ask you as to Exhibits 175 and 367 and 376? 23955

A. No.

Q. What did he tell you, or what did Mr. Vilas tell you, or Mr. Goetz, tell you as to the questions that you would be asked, and as to the scope of your testimony in reference to withdrawals?

A. I did not know I was going to be asked regarding them until the first question was asked.

Q. What did they say to you about withdrawals since you were last on the stand?

A. Nothing.

Q. I mean, when I say last on the stand, when you finished your cross-examination, when I finished the cross-examination of you?

The Master: Several months ago?

Mr. O'Brien: Yes.

The Witness: Why, in respect of any testimony given by me, I should say nothing.

Q. Don't limit the question. I put the question. You understand plain English?

A. I think I do.

Q. What did they say to you since you were cross-
23957 examined by me last as to the withdrawal of the complainant company and property used and withdrawn?

A. Why, I did not—

Mr. Ransom (interrupting): Objected to as immaterial. Simply taking up the time.

The Master: Allowed.

The Witness: I do not recall anything in particular in that period of several months. It was about the first of September when I was last on the stand, and there has been a period of over two months elapsed since then, and as to what mention there might have been passed between
23958 him and me on the withdrawals, I do not recall but there has been no extended discussion of it.

Q. What did he say to you?

A. I do not remember his saying anything. I am simply covering the possibility that he might in some discussion that had occurred at the office, there might have been a mention of a withdrawal when I was present.

Q. Did Judge Ransom tell you, or anybody connected with the attorneys for the complainant tell you, that you would be asked on the stand questions as to the withdrawals of property?

A. I did not have a ghost of an idea that I would be until the first question was asked here.

Q. Did Mr. Carter talk to you about it?

A. He did not.

Q. Did anybody connected with the complainant company discuss this matter with you?

A. What do you mean, discuss withdrawals, or my testimony? That is two different things.

Q. Both?

A. Both?

Q. Yes, take up each separately?

A. As to the first question, as to withdrawals, in 23960
the abstract, Mr. Teele; and as is already on the record, he and I have discussed withdrawals.

Q. Who else?

A. Mr. Teele's assistants.

Q. What were their names?

A. Mr. Moeran is the only one that I remember now of Mr. Teele's staff that discussed withdrawals with me, but principally Mr. Teele.

Q. Who besides Mr. Teele and Mr. Moeran discussed this matter with you?

Mr. Ransom: Objected to as immaterial, just a mere waste of time.

The Master: Question allowed. 23961

A. I do not recall any others. I should say that the substantial part of it was those two men.

Q. Who communicated to you that you would be required to come down here? Who gave you your orders to come to court?

The Master: Today?

Mr. O'Brien: Yesterday and today.

The Master: Who directed you to be in court yesterday and today?

The Witness: I do not recall whether it was Judge Ransom or Mr. Vilas.

Q. Did Mr. Carter discuss this subject with you at all, the question of withdrawals?

A. How far back do you mean? He has five years ago and seven years ago and ten years ago.

Q. Don't start to give me that talk, Aldrich.

The Master: That will do. It is your own fault. Did Mr. Carter discuss withdrawals with you within the last two months?

The Witness: He has not.

The Master: Has he discussed this testimony with you?

23963 The Witness: He has not.

The Master: Did anybody in the gas company or out of the gas company discuss with you the testimony that you gave here relative to Exhibits 367 and 185?

The Witness: They did not.

The Master: It is now asked four different ways and four different times, and I won't allow another question on it.

Q. Did Mr. Carter give you directions at any time to follow the instructions of counsel for complainant with respect to coming to court and testifying?

A. Do you mean—

23964 Q. (Interrupting.) I mean just what I said.

The Master: If you don't understand the question, say you don't understand.

The Witness: Well, I do not. I am not sure that I do.

The Master: Next question.

Q. What instructions did you get from Mr. Carter since this case was begun as to taking instructions from the complainant's counsel concerning your testimony in court?

Mr. Ransom: Objected to as immaterial and incompetent.

The Master: I will allow it.

Mr. Ransom: Exception.

The Witness: I do not recall anything further than back when I first appeared he told me that Judge Ransom might want me as a witness, and that if he summoned me I was to respond.

Q. You have consulted with Mr. Carter in court here many times during the progress of this case, have you not?

A. I have talked to him in the court room since it started. I don't know whether it would be many times or not. 23966

The Master: About this case?

The Witness: Why about this case and other matters. Sometimes when I came down here to see him it was about other matters.

The Master: Next question.

Q. What did he say to you concerning your testimony in this case?

The Master: We have had enough of that. Question not allowed.

Mr. O'Brien: I want to get a few direct answers, your Honor.

The Master: You have had enough of them. Anything else? Anything better than that? 23967

Mr. O'Brien: Your Honor, I have got to protest against the inferences of the Court in asking me if I have got anything better than that.

The Master: I don't think there is anything in this; I think it is a waste of time. I cannot see any purpose in it.

Mr. O'Brien: Well, I except to your Honor's statement, with all deference to the Court, I except to your statement.

Q. So you went over this matter, since you were last on the stand, with Mr. Teele?

The Master: Question is not allowed.

Mr. O'Brien: Exception.

Q. You said this morning in your direct testimony that you went over figures on some of these exhibits, and that you even added them up on the adding machine. Did you make the additions for Mr. Teele in these Exhibits 185 and 367 and 376?

A. I did not.

Q. Did you make the additions on the working papers from which these exhibits were made?

A. I did not.

23969 Q. When you said you went over these on the adding machine, what did you mean?

A. I meant that I added them up on the adding machine for my own satisfaction.

Q. And on separate papers?

A. I think I added them up from the typewritten copy, not from the original pencil—I am pretty sure that the copy I used checked up the total on the adding machine was the typewritten copy.

Q. A typewritten copy?

A. Yes.

Q. And have you got the results of your work?

A. Of my addition?

23970 Q. Yes.

A. Yes. It is in the exhibit; getting the same figures as used there, that is also my answer as well as his.

The Master: Have you got the slip of paper that was in the adding machine?

The Witness: It was not a tape machine; it was a comptometer. The comptometer does not record—it is not a listing machine. The Burroughs is a listing, the Wales is a listing, the comptometer is not a listing. It has no tape.

Q. How long did you work with Mr. Teele on these exhibits?

A. I could not answer that question because I have conferred with him on other matters, and I could not divide the time. I don't know the whole time that I have spent conferring with him at any rate, and I could not undertake to divide.

Q. I did not ask you whether you used a stop watch?

The Master: You are wasting seconds every time you do that. Next question.

Q. I will ask you to approximate the time that you spent with Mr. Teele on this work?

The Master: If you cannot approximate it, 23971
say so.

The Witness: I cannot.

Q. Could you give the number of months or days?

The Master: Yes or no.

The Witness: I cannot give it.

Q. Did you turn over to Mr. Teele figures purporting to be the Court value of properties?

A. I don't know what you mean. I do not understand the question.

Q. Oh, you don't understand me. Turn your attention to the first page, and see if that language is simple enough for you.

Mr. Ransom: First page of what? 23973

Mr. O'Brien: Exhibit 367.

The Witness: On the first page—second page of Exhibit 367 I read: "Note: The book value of items identified in the record is $1,461,548.14, the Court value."

The Master: He did not ask you to read it.

Mr. O'Brien: I will ask the protection of the Court against this freshness on the part of the witness.

The Master: What is your question?

Mr. O'Brien: I will ask the stenographer to read it. He said he did not understand it.

(The question was read by the stenographer.)

The Witness: You mean did I turn over a memorandum to him that bore on its face the dollars extended into the column?

Q. I mean just what I said.

The Master: If you don't understand the question, say so.

The Witness: I do not understand the question unless it means that, and if it means that—

The Master (interrupting): You do not understand the question.

23975 Q. Did you turn over to Mr. Teele memoranda that the Court value is $1,439,147.00?

A. I did not.

Q. Did you gather those figures together for him?

A. I did not. I assisted him at times while he was compiling the figures.

Q. And did you collect any data with or used in connection with the set-up of that figure?

A. I assisted him in the collection or identification of items.

Mr. O'Brien: Your Honor, I ask that the witness be compelled to answer the question I put.

The Master: I think he has answered.

23976 Mr. O'Brien: I note an exception.

Q. To what extent did you assist him?

A. Why, I do not know how to answer that. I cannot say three feet or five gallons. Whenever he needed it. I cannot express it measurably. Whenever he needed assistance.

Mr. O'Brien: Your Honor, I again appeal to the Court that the witness be admonished to give me—

The Master: There is no use appealing to me. You are getting the kind of answers your questions call for. I would give you the same kind of answers if I was there myself.

Mr. O'Brien: Your Honor approves of the freshness of the witness?

The Master: It is not a question of freshness.

Q. Did you give the papers to him?

A. I assisted him in getting the papers that he required from the company's archives. I did assist him in getting them.

Q. What did you do?

A. About what?

Q. What did you do to assist him? What papers did you turn over to him?

A. Why, there were a good many thousand papers 23978
and documents and vouchers and invoices and accounting paraphernalia of that kind that he employs, and I cannot give you an answer that covers all of those.

Q. Did you give him all of them?

The Master: Have you got in mind any particular occasion when Mr. Teele asked you to identify something or get something, and you recall having done something for him concretely that you could tell Mr. O'Brien now. "I remember on one occasion he asked me about a boiler or something else, and I remember this is what I did, and this is what I got him and this is what we 23979
finally accomplished, to illustrate just what you say."

The Witness: Well, I will look at the exhibit on withdrawals and possibly the items there may suggest something to my mind.

The Master: See if you can get something quickly.

Mr. O'Brien: Your Honor, I object to the witness indulging in this line of voluntary talk.

The Master: All right, never mind that. Next question. I try to help you, and you won't be helped.

Mr. O'Brien: I am asking that the statement he made be stricken from the record, it was not in answer to the question.

The Master: Next question.

Mr. O'Brien: Exception.

Q. Am I correct in gathering from your testimony given this morning, that for a number of years you have been assigned to the work of making reports upon property withdrawn from use?

Mr. Goetz: Objected to.

The Master: Not allowed.

23081 Mr. O'Brien: Exception.

Q. Have you been assigned for a number of years to the work of determining the properties withdrawn from use?

Mr. Goetz: Same objection.

The Master: Not allowed.

Mr. O'Brien: Exception.

Q. Did you prepare the data appearing from year to year in the reports made by the complainant company to the Public Service Commission of properties withdrawn from use?

A. I participated in the preparation to some extent.

23082 Q. Did you verify the reports made by the complainant to the Public Service Commission so far as they set forth statements with regard to withdrawals?

A. That is after the figures had been carried into the report?

Q. Before or after?

A. I do not believe I verified the report after it had been made up. After my contribution to the preparation of the figures had been made, I should say from my present recollection I had nothing more to do with it.

Q. You turned them in to Mr. Carter?

A. Whatever work I did in that connection was done with Mr. Brundage.

Q. Then this part of the preparation of the annual reports was work done by you?

A. No. I said I made a contribution to it.

Q. Well, what contribution did you make? Just what portion of the data did you prepare?

A. Well, now, there you are asking me a general question again that could apply to a number of years. Do you mean all of the reports since the uniform system of accounts was established and the Public Service Commission was instituted? I do not know what you are asking me about.

Mr. O'Brien: Your Honor, I appeal to the Court. 23984

The Master: Well, do you know what years you have reference to?

Mr. O'Brien: I have asked—I want a different answer.

The Master: Well, the question is not allowed then.

Mr. O'Brien: I will note an exception to your Honor's ruling. I again ask the Court to admonish the witness not to indulge in conversation on the witness stand with me.

The Master: The Master states it is very largely counsel's fault. Next question.

Mr. O'Brien: The witness will feel further encouraged. 23985

The Master: Next question.

Q. Mr. Aldrich, for the year 1918, did you prepare the data upon which the report as to withdrawals was based, the report to the Public Service Commission?

A. You mean prepared as a whole? No. Some work of mine doubtless entered into it, but I would not say that I prepared all.

The Master: Just answer the questions yes or no.

Q. Did you check it up before it went finally into the report?

A. No, not for 1918, no.

Q. What part was done by you, and what part by anybody else?

A. I do not remember.

Q. What was done by anybody else?

A. I do not remember.

Q. Who worked on that section of the report besides you?

A. I do not remember exactly, who in the accounting
23087 department was on that. I do not remember.

Q. Was there anybody in any other department on it?

A. You mean on withdrawals now?

Q. Yes.

A. I should say no, that it laid between the Accounting Department and myself. That would be my best recollection.

Q. Well, when you said you contributed to it, you mean that it was a joint work made up by the accounting department and by you, do you?

A. No. I would not carry my participation in it so far as describing it as being something done jointly.
23088 I would say more, that where they needed some assistance in the making up of the figures they may have asked me a few questions, but we surely did not buckle down to a desk with pencil and paper and make it up together.

Q. Would that same statement apply to the other years in which reports were made to the Public Service Commission?

A. No. I think for the years 1913 and 1914 that I participated more extensively in compiling the withdrawals reported.

Q. You mean you took charge of it that year?

A. No, I do not mean that. I mean that in collaborating with the representatives of the Accounting Department I spent more time with them.

Q. Did the representatives of the Accounting Department who got up the report each year look to you for verification of the data with respect to withdrawals?

A. I could not interpret their attitude of mind toward me.

The Master: Just one question.

By the Master:

Q. If the report, for instance, for 1918, showed 23990
that the withdrawals for that year were $1,000,000, did you fix that figure?

A. No, sir.

Q. Did it go in with your approval?

A. No, sir.

Q. Did you know that was the figure that was going to be put in?

A. For 1918? No, sir.

Q. Or any year prior to that?

A. I would have known in advance for 1913 and 1914.

Q. And just what the final figure was that went into the report? 23991

A. I think I knew those two years.

Q. In other words, if the 1913 and 1914 reports were produced you would expect them to agree with your figures for those years?

A. No, if those reports were produced I would only be able to say that those are the figures that I participated in compiling.

Q. You would say they were right?

A. I should say all the reports are right.

The Master: Next question.

By Mr. O'Brien:

23902 Herbert W. Aldrich, Cross.

Q. Did you go over these reports to check up Mr. Teele's figures before they were offered in evidence in these three exhibits I have referred to?

Mr. Ransom: Objected to.

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Were you assigned to Mr. Teele in behalf of the engineering department or representing the engineering branch of the work, to assist him in getting up these Exhibits 185, 367 and 376?

Mr. Ransom: Objected to as having been gone
23903 over fully on direct and cross.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. When did you begin that work?

Mr. Ransom: Objected to on the same ground.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. How long did you spend on that work?

Mr. Ransom: Same objection.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you give Mr. Teele the information that enabled him to throw into the several columns on Ex-
23904 hibit 367 the figures under the titles "Court Valuation Items Identified, Items not Identified"?

Mr. Ransom: Objected to on the same ground.

The Master: Same ruling.

Mr. O'Brien: Exception. Your Honor will appreciate that some of these questions must overlap, on some part of the examination of the witness.

The Master: Next question.

Mr. O'Brien: But I want my record made in my own way. I do not want anybody to lose his temper.

The Master: Ask another question.

Mr. O'Brien: There is only you and me and the—

The Master: Step down, Mr. Aldrich. Have you any other questions you want to ask before I let him go?

Mr. O'Brien: I have a great number of questions—a great number of them.

The Master: Well, ask them, because I will have Mr. Aldrich step down if you do not.

Q. In every place in Exhibit 367 where Mr. Teele has used the expression in items "Estimate by company's engineer," does that refer to you? Are you the engineer? 23996

Mr. Ransom: Objected to.

The Master: Objection sustained.

Mr. Ransom: It was covered on the cross-examination by Mr. Chambers.

The Master: It was all covered.

Mr. O'Brien: Your Honor will permit me to ask my question in my own way.

The Master: The next question.

Mr. O'Brien: Exception.

Q. Did you go to the books in furnishing that information to Mr. Teele, or did you seek it from other papers or records than those which have been received in evidence in this case? 23997

Mr. Ransom: Objected to.

The Master: I will allow that.

A. Which information do you refer to?

Q. The items in Exhibit 367 entitled, various pages, "Estimate by company's engineer"?

A. Well, the creation of this Exhibit 367 represented a lot of industry and hard work on Mr. Teele's part, and I do not think I can give you an instructive answer to such a general question as you have just asked

me. There are a good many different items there, and what I did in different cases varied. Ask me about a particular item and I will try to answer the question.

Q. Take page 3.

A. I have it.

Q. The item first thus entitled is an estimate by company's engineer with reference to a storage shed "T" between 17th and 18th Streets, west of Avenue B, "Estimate by company's engineer $600."

A. Yes.

23999 Q. Did you get that information from records other than the books offered in evidence?

A. Well, in the first place I made the estimate of $600. Then that memorandum is the document supporting the journal and so on through the books of account. Now Mr. Teele turned that up in the books of account. I do not recall that he needed any assistance from me whatever in connection with that on the two items following.

Q. This does not mean, then, that you made an estimate for this particular exhibit?

A. It most surely does not. It means the estimate I made at the time withdrawal was made on the books.

24000 Q. Would you say the same for the estimate as to the storage shed "U"?

The Master: Objection sustained.

Q. And as to the storage shed "T"?

Mr. Ransom: Objected to.

The Master: Same ruling.

Q. And the old fence around the storage yard?

The Master: Same ruling.

Mr. O'Brien: Exception to your Honor's ruling.

Q. Where that expression is used, "Estimate by company's engineer," in this exhibit, does that invari-

ably mean you or does it at times mean some other engineer?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. When that expression is used by Mr. Teele in this exhibit; does it mean in every case an estimate made originally by an engineer of the company, which found its way through a report into the records of the company, the journal and then into the ledger?

The Master: Same ruling.

Mr. O'Brien: Exception. 24002

Q. Will you state, Mr. Aldrich, whether the use of this term "Estimate by company's engineer," means that at the time a report was made of the abandonment or the withdrawal of a piece of property by the complainant the company was unable from its books to determine the value of that particular piece of property?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Does it mean that at the time of the withdrawal the engineers or representatives of the company were unable to find a book cost for the particular piece of property in question which was withdrawn? 24003

The Master: Same ruling.

Mr. O'Brien: Your Honor will perceive that I am trying, in order to save time and avoid a repetition of questions, to get general information that would apply to a number of different items in this exhibit.

The Master: Ask the next question.

Mr. O'Brien: Exception.

Q. On page 4 of Exhibit 367 you have "company's records show numerous engines of this make at the one price," and you have carried out into the "Items

Identified" column, $235. Will you state whether or not there was any effort made at the time the underlying report was made upon that withdrawal, to find when these several engines were bought by the company?

A. There was.

Q. And what was the result?

A. We found that they had bought a number of them at different dates, paying in each case the uniform price of $235.

Q. Then this price was embodied in the report of
24005 the engineer without regard to the particular time during which the engines have been in use?

A. I understand you to ask me in effect if we could distinguish between one engine and another and connect it to the particular purchase of a Bronner rotary engine, and my answer is no. The books show the purchase of numerous Bronner rotary engines. Now, when this one shown on page 4 was retired, I could not relate that to a particular purchase of a Bronner rotary engine.

By the Master:

Q. But as they all cost $235, you set it up as $235?

A. That is what we did.

24006 Q. Without regard to what you paid for the machine?

A. That is what the books show. Numerous engines of this make at the one price.

By Mr. O'Brien:

Q. Mr. Aldrich, were you assigned to this work of making up reports of property withdrawn from time to time from use, by Mr. Bradley or Mr. Morris or Mr. Woods?

The Master: The question is not allowed, and unless counsel will get on some line of inquiry that I think is useful I shall direct the witness

to leave the stand. The witness has said a half a dozen times that was his business, that was his job. That is what he has been doing for years. What is the use of repeating it over and over again?

Mr. O'Brien: Your Honor apparently does not see the purpose of my questions.

The Master: I never do see the purpose of your questions. There have been very few questions that you have asked on cross-examination that seem to me to have a real purpose.

Mr. O'Brien: That is a sweeping remark, your 24008
Honor, and I take exception to it.

The Master: You have called for it by the statements you made.

Mr. O'Brien: Well, I note my exception to it if it indicates the mind of the Master. I want to say right here that the reports are made under oath by the company to the Public Service Commission, and we have a right to find out just whether these reports are made from information and directly from information furnished by this witness.

The Master: I will not allow any more questions on that subject.

Mr. O'Brien: And the connection ought to be 24009
established, your Honor, because there ought to be somebody under oath in this case that is going to be responsible for the proposition that moneys have been spent and that books have been made up. We have got to get somebody under oath who will feel the responsibility of an oath and who will stand for the testimony in this case. Now, I want to find out from the witness whether these engineers, Mr. Bradley and Mr. Morris and Mr. Woods, have as to certain branches of infor-

mation—this particular branch at this moment, withdrawals—depended entirely on his report, whether he was the one who was delegated to take care of that particular report.

The Master: And I say I will not permit any further inquiry on that line. It has been sufficiently covered.

Mr. O'Brien: I note an exception.

Q. On the bottom of page 5 you have an estimate by company's engineer of the paving, sewers, and so forth, and then carried out in the column "Items not
24011 identified," $2,410.52. Will you state whether you were the engineer who prepared that report giving those figures to the Accounting Department?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Can you give us the several items making up that account?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Can you tell us what "etc.," means?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Can you tell us whether this item includes over-
24012 heads or contractor's percentages?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Was that particular item reported on by Mr. Simpson's department?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did your work in connection with the reporting upon withdrawals take you into the Distributing Department or what is called the Street and Mains Department?

A. It did not.

Q. We may assume that no items that cover the matter of paving, sewers, and so forth, were reported on by you?

A. Any item in Exhibit 367 of that character was reported on by me, as it had nothing to do with mains and services. The item about which you have just interrogated me—

The Master: That is enough.

Mr. O'Brien: Read that answer, please.

(The answer was read by the stenographer.)

The Witness: That is not complete.

The Master: Leave it incomplete. 24014

Q. Do you care to amend that statement, Mr. Aldrich?

The Master: The question is not allowed.

Mr. O'Brien: Your Honor, that seems to present a contradiction. I would like to have it cleared up.

The Master: All right, ask your next question.

Mr. O'Brien: Exception.

Q. Mr. Aldrich, can you say why you did not testify when you first went on the stand and were examined concerning your work, that part of your work since you have been with the company consisted in making reports upon pieces of equipment withdrawn from service? 24015

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Did you not represent at that time that your work was entirely in the construction department?

The Master: Question not allowed. I think I will excuse Mr. Aldrich. I don't see any sense in keeping this witness here any longer. Wait for one more question and see if there is anything else.

24016 Herbert W. Aldrich, Cross.

Mr. O'Brien: Your Honor, to cover this branch of the examination and not face repeatedly the ruling you have made of "question not allowed," I desire to say so that you may rule with a general ruling and save that much time, that I intend to go through with my cross-examination of the witness on the whole subject of this Exhibit 367, asking him as to each particular item entitled "Estimate by Company's Engineer," or in almost similar language whether he was the engineer, where he got the figures upon which he
24017 based the estimate, whether the figures are in this particular amount in the books, or whether they have been subjected to adjustment or calculation by the witness Teele before finding that place in this exhibit, how much of the original estimates were made by him, based upon positive actual data, and how much was made the subject of either guesswork or calculation or assumption as to the value of the piece of property in question at which it was to be written up as a withdrawal.

Further, to get specific information from the witness as to the records made by him at the time
24018 he reported the withdrawal of a piece of property so as to bring out whether or not there is a positive report made that the property was physically withdrawn as of a certain date, or whether that was left to monthly or yearly, or annual adjustment through reports embodied in the journal or in the operating ledgers of the company.

Further, to find out from the witness whether or not he got up tentative reports upon these matters which were turned over to the witness Teele and made the basis of this exhibit. Whether or not he confirmed the figures as taken from the

books of the company, and whether he made any corrections in those figures.

The examination will proceed further to the extent of finding out to what extent counsel for the complainant went into the conferences when these exhibits were gotten together, how much of a part was played by Mr. Carter in adjusting these figures, reviewing them, correcting them, modifying them, and so on.

Now, that is the scope of the examination, which only describes in general terms that I have in mind, but it will give you some idea of the 24020
examination which I desire to enter into at this time, continuing along the lines already indicated. I state it thus because I do not care to face a continual volley of "objection sustained," or "I won't allow the question," and have the record lumbered up with a number of exceptions on my part.

The Master: Nothing that you have said changed my view about the situation. Have you any other questions?

Mr. O'Brien: I note an exception to your Honor's ruling with respect thereto. Now, Exhibit 376— 24021

The Master: Unless you have got something entirely different from the line of questions you have been asking, you will be wasting time on Exhibit 376.

Mr. O'Brien: May I request of your Honor leave to have the witness appear day after tomorrow so that I may have an opportunity to read the testimony that he gave today?

The Master: No, I won't do that.

Mr. O'Brien: It may save the time of the Court.

The Master: No, I won't do that at all. I adhere to the ruling I made a long while ago, that if at any time you can show me some pertinent, material, useful question that you want to put to any witness who has been on the stand, I will bring him back, but you have to show me first that the inquiry that you want to pursue is useful.

Mr. O'Brien: Your Honor, here is the view I take of the testimony given this morning: Where there were matters that were more or less formal,
24023 like the attempts to correct tax maps, I did not deem it necessary to go much into detail; in fact, as you will recall, I haven't asked any questions about it. But, just near the close of the witness's direct-examination this morning he was asked questions that indicated to my mind that he was brought to this stand to correct the defects in the witness Teele's examination. I recall the fact that when I endeavored to get from the witness Teele the names of the engineers, to get some detail as to the various items, "Estimates of Engineers," that your Honor overruled and would not allow the questions of that kind to be put by
24024 me to the witness Teele. Now it appears that counsel for the complainant, appreciating that that is an entirely unproven branch of the witness Teele's exhibit, has brought on this man to prop it up, and they have asked him two or three questions, blanket questions to make their record, and I assume that they have done it with the hope that we would not, because he only asked a few questions on it, that we would pass over that very, very important matter without a careful cross-examination. Now, I can do that, perhaps, in a briefer time if the examination of the witness is deferred until day after tomorrow.

The Master: If you have any other questions to ask you had better ask them.

Mr. O'Brien: I except to your Honor's ruling that I may not have further time to review the record and see just how far I will cross-examine the witness.

The Master: Have you anything particular in mind that you want to ask about Exhibit 376?

Q. Did your statement as to—

The Master: No, I am asking you something. Have you anything in mind that you want to develop? 24026

Mr. O'Brien: Some of the questions will be a little different.

The Master: What point do you want to talk about, what do you expect to develop?

Mr. O'Brien: I want to find out just what I found out with regard to the other exhibits.

The Master: I am not here to find out things, I am here to let you bring out facts that you have in mind, that you want to develop. What do you want to develop?

Mr. O'Brien: I want to develop how long this witness has been on this work, when he undertook to refresh his memory as to things that 24027 were in use, equipment that was discarded at various times during 1906. I want to find out where he got his data from, I want to find out how much of the data embodied in the several exhibits we have referred to today is based upon original reports made by this witness Aldrich to the Engineering Department or to the Accounting Department, what part of it is dependent upon reports made by other engineers, some of whom may still be in the employ of the company, and to determine in that way whether or not the original reports are in existence.

The Master: I will now allow those questions.

Mr. O'Brien: By which we may check up the figures, that finally found their place in Mr. Teele's exhibits. Then in regard to Exhibit 376, I want to find out from the witness whether he also went over and checked up this expert accountant's figures, why they did not rely upon Mr. Teele's own calculations, and why they resorted to have Mr. Aldrich go over his work and review it as a comptometer.

The Master: I think I will excuse Mr. Aldrich.

24029 You can go.

Mr. O'Brien: That is the scope of examination—

The Master: The witness is excused.

Mr. O'Brien: The others will appear as I go through the exhibits in question.

The Master: The witness is excused.

Mr. O'Brien: I except at this time and protest against not being allowed further cross-examination of the witness.

The Master: If you can show me, before the complainant closes its case, that there is some witness that you want to ask some useful questions, I

24030 will call him back.

Mr. O'Brien: I note an exception and record a protest on the part of the defendant Swann.

GEORGE E. WOODS, recalled.

The Master: Are you recalling Mr. Woods in accordance with the suggestion I made?

Mr. O'Brien: Does your Honor mean a suggestion made out of court?

The Master: One that I made when several counsel were standing around. I suggested that Mr. Woods be recalled, that I wanted to ask him some questions about the percentage of reduction at the Astoria plant.

Mr. Ransom: No, I am not calling him for that purpose. 24032

Mr. Chambers: I join the defendant Swann in his protest, and in his request for further cross-examination of the witness, and take an exception.

The Master: Which witness? Aldrich?

Mr. Chambers: Yes.

The Master: Sure.

Mr. Ransom: At the close of Mr. Woods' examination you ruled that I could not interrogate Mr. Woods at that time on any matters except as to operating expenses and conditions, that I should not at that time go in with Mr. Woods to anything relating to capital account. 24033

Mr. O'Brien: He told you you would have to bring other witnesses to cover that matter.

Mr. Ransom: I told you that I had a few questions regarding property and use of property, and I have now brought him back for that purpose. Before I go ahead with Mr. Woods I would like to have this paper marked for identification at this time.

Mr. O'Brien: Just give me a chance to say something on the record of vital importance be-

fore you offer anything. Before you proceed to offer anything I am going to ask the Court's permission at this time to record my objection to the recalling of this witness, on the ground that he was called and examined on the direct in detail, he was examined in cross-examination until your Honor thought the subject was exhausted, and we had proceeded with our preparation of the case on the theory, on the assumption that the witness's testimony was through, and that he would not be recalled. For that reason, your
24035 Honor, I state at this time that we strenuously object, appreciating that your Honor may control, within certain limits, the mode of trial and the manner of proof; but it is certainly unfair and improper to have this witness recalled at this time after they have had him off the stand and gone over the testimony, to prop up the testimony previously given. In regard to that further, counsel having stated that they have—trying to put the burden on the Court now—trying to find some excuse in the Court. He says your Honor told him that he could recall him later to go into matters of distribution—

24036 The Master: Stop it.

Mr. Ransom: You directed—

The Master: Stop it. What is the purpose of recalling Mr. Woods? What do you want to prove by him?

Mr. Ransom: I am recalling him in respect to the matters in relation to the use of property as to which I did not interrogate him when he was on the stand before.

The Master: That is meaningless to me. What do you mean?

Mr. O'Brien: It is evasive.

The Master: No, tell me in plain English what you want to prove.

Mr. Ransom: As to the use which is made by the company of certain parcels of property.

The Master: That Aldrich has covered?

Mr. Ransom: No. He has testified with respect to certain phases of them, but there are certain matters in connection with Aldrich's testimony when he was on the stand that your Honor indicated would have to be testified, their use, by an operating man. I would have been glad to have interrogated Mr. Woods as to these things 24038
when he was on the stand, but under your Honor's ruling you will recall you said that at the present you only wanted to go into the question of the cost of production and distribution.

Mr. O'Brien: Your Honor—

The Master: I won't hear anything.

Mr. O'Brien: You overrule my objection to the witness being recalled and the case reopened as to Mr. Woods?

The Master: Yes. I will have witnesses recalled a dozen times if necessary.

Mr. O'Brien: I object to the witness being recalled, and take an exception. 24039

Mr. Ransom: I want to have something marked for identification which I furnished to the defendants, so the record will show that it has been furnished. I furnished to the defendants earlier today a statement of the expense of the cost and distribution of the Consolidated Gas Company for the 12 months ended October 31, 1919, in similar form to Exhibits 366 and 367.

Mr. O'Brien: I have not seen it.

Mr. Ransom: Mr. Edgerton has it.

The Master: Have you got it, Mr. Edgerton?

24040 George E. Woods, Cross.

Mr. Edgerton: I have.

The Master: Mark it for identification.

Mr. O'Brien: I object to it being marked for identification. He did the same thing yesterday, coming in and building up a record to show that he is handing us piecemeal pieces of information, unverified, not testified to, and without foundation in the evidence in this case.

Paper marked Complainant's Exhibit 387 for identification.

By Mr. Ransom:

24041 Q. Mr. Woods, referring to Block 982, at the 14th Street plant, will you state the available area in square feet contained in that block, if you know, for the storage of coke when the 14th Street plant is in operation?

A. About 54,000 square feet.

Q. Available for the storage of coke?

A. For the storage of coke.

Q. What is the total storage area available there?

Mr. O'Brien: I object to this.

The Master: What is the purpose of this?

Mr. Ransom: To show the use of this property. They made a great point that this area

24042 there which is used—

The Master: You are trying to show that you are using that property for storage?

Mr. Ransom: Yes, instead of being excessive, as Mr. O'Brien and Mr. Chambers claimed during the cross-examination of Aldrich, that in reality it is inadequate.

Mr. O'Brien: This is not actual use, but possible or prospective use. Note my exception to the Master's ruling.

Q. What is the total area there available?

A. About 89,711 square feet.

Q. How much is available there for storage?

Mr. O'Brien: I object to that as calling for the conclusion of the witness. He can state what the capacity is, give us the dimensions, and we will do the rest.

The Master: What do you mean available for storage, fit for storage?

Mr. Ransom: What is the area, what is the space?

The Master: Fit for storage?

Mr. Ransom: Yes, available, not covered with other things. 24044

A. About 74,480 square feet.

Q. Do you use and need any part of it for the revivification of oxide?

Mr. O'Brien: Now, your Honor, this becomes humorous. We are in the revivification house now. I object to it. It calls for a conclusion.

Mr. Ransom: This witness can state what they use and what they need there.

The Master: I will allow it.

Mr. O'Brien: Exception.

A. About 20,000 square feet.

Q. Leaving about 54,000 square feet for the storage of coke? 24045

A. For the storage of coke.

Q. How many days production, approximately, would that accommodate, in storage of coke?

A. If we are running the plant at almost normal maximum capacity it would be anywhere from 35 to 45 days, depending on how we disposed of some.

Mr. O'Brien: I move to strike out the question and answer as being beyond the scope of the purposes that counsel for the complainant announced was the reason for recalling the witness.

The Master: Motion denied.

24046

Mr. O'Brien: You can see, your Honor, how close he is going into the whole question of the witness's previous testimony.

The Master: Motion denied.

Mr. O'Brien: Exception.

Q. On the basis of how many million feet of production of gas a day?

Mr. O'Brien: I object to that as irrelevant, incompetent and immaterial, and as being matter previously gone over by the witness.

The Master: Objection overruled.

24047 Mr. O'Brien: Exception.

A. Between four and five million cubic feet a day.

Q. That is what you call normal maximum capacity?

A. The normal maximum capacity of that plant is about five million feet.

Q. And normal production under operating conditions is three to four million, you say?

Mr. O'Brien: I make the same objection. He is patching up the old case. You can see that the judge was not entirely candid with us when he stated what the purpose of recalling the witness was.

24048 The Master: I will allow it.

Mr. O'Brien: Exception.

A. The normal throughout the year would be that, but we might be up to five million during the heavy load.

Q. In your judgment is this 54,000 square feet a sufficient storage capacity for the storage of coke during the operation of the 14th Street Plant?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Master: I will allow it.

Mr. O'Brien: Exception.

A. Operating at full capacity it is not, for this reason—

The Master: No, that is enough.

Q. What storage capacity would you say was reasonably necessary for the proper operation of this plant?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: It is allowed.

Mr. O'Brien: Exception.

A. 50 to 60 days.

Q. What areas at the 14th Street plant are available 24050
for the storage of coal?

A. We have coal storage sheds on Block 988, at the easterly end of Block 988.

Q. Of what capacity?

A. With a capacity of about 10,000 tons. On Block 991, which is the block east of 988, the open storage there would be anywhere from 16,000 to 20,000 tons.

Q. About how many square feet of area of open storage space?

A. 67,000 square feet.

Q. Taking those sheds of storage areas together, about how many days supply of coal can be accommodated there? 24051

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. From 50 to 60 days.

Mr. O'Brien: May I ask the Court to ask counsel what the purpose of this is, why he is taking up our time? Is he keeping within the scope of what he said about the purpose of the witness's testimony?

24052 George E. Woods, Cross.

The Master: I don't care.

Mr. O'Brien: Exception.

Q. In your opinion is there any available substitute space that could be used for coal storage during the operation of the 14th Street plant in place of Block 988 and Block 991?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: I will allow it.

Mr. O'Brien: Exception.

A. 982 I testified about—988 and 991—no, there
24053 is no other available space.

Q. In these storage areas that you have indicated would it in your opinion be practicable to store a sufficient quantity of coal to enable that station to be operated during the winter months without the use of Block 991?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: I will take it.

Mr. O'Brien: Exception.

A. It would not.

Q. What is the present state of the occupancy of Block 987, at the 21st Street Works?

24054 A. We have one 500,000 gallon oil storage tank, there is a small tank there for drip oil, underground, and the balance of the block is now occupied by the United States Government tolnol plant and some tanks belonging to them.

Q. What is the area of this block?

A. 29,745 square feet.

Q. The government has not yet removed its building from the block?

A. It has not.

Q. What is the present storage capacity of the oil

tanks at the 21st Street station, including the 500,000 gallon tank on Block 987?

A. We have about eight days' storage at our maximum production.

Q. That is about how many gallons?

A. About 925,000 gallons.

Q. That is eight days' supply at how many million cubic feet a day?

A. At about 28,000,000.

Mr. O'Brien: Your Honor, you can see how he is overlapping his original testimony here.

The Master: Yes, go on, next question. 24056

Mr. O'Brien: Exception.

Q. Is there room on Block 987 for additional oil tanks for the storage of oil?

A. There is room for three additional tanks of 500,000 gallons each.

Q. That would give a capacity of how many days supply of oil?

A. Twenty-one or twenty-two days during the heavy winter.

Q. In your opinion, would that be a sufficient margin of supply?

Mr. O'Brien: I am going to object as incompetent, irrelevant and immaterial, your Honor. 24057
He was not called for that purpose in the first place; in the second place he is reopening the whole of his direct examination; in the third place the foundation has not been laid for this question; in the fourth place it is not definite, it does not indicate clearly whether the witness is to be asked as to this question, having in mind the whole of the resources and capacities of the complainant and the affiliated companies from which it gets transferred gas.

The Master: Objection overruled.

Mr. O'Brien: Exception.

The Witness: I think that storage would be ample for our requirements, although the Public Service Commission made a suggestion that we have considerably more than that.

Q. How much more?

A. Their recommendation or suggestion is 60 days.

Mr. O'Brien: Just a minute. I object.

The Master: Same ruling.

Mr. O'Brien: Exception.

24059 Q. Now, for what purpose is Block 1090, Lot 23, used in connection with the 42nd Street work?

Mr. O'Brien: Haven't we had this thing gone over very throughly with Mr. Aldrich and Mr. Miller the other day.

The Master: I will make it again.

Mr. O'Brien: Well, isn't it taking up time of the Court?

The Master: Yes.

Mr. O'Brien: Isn't it prolonging the case here?

The Master: Yes, you are prolonging it now by discussing it. I have made my ruling.

24060

Mr. O'Brien: Exception.

The Witness: That is for coke storage during the operation of the plant.

Q. Well, is there any other available space at that plant for the storage of coke without encroaching on the coal storage facilities?

A. There is not.

Q. Are the coal storage facilities there more than adequate for proper reserve supply of coal?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: Yes, it is all conclusion of the witness, it is opinion evidence. Go on.

Mr. O'Brien: Exception.

Q. Are they?

A. No.

Q. How much coke per day is produced at the 42nd Street works when in operation, say, on a four and one-half million cubic feet per day basis?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, and the proof already shows they are not using it at all.

The Master: I will take it. Go on. 24062

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

The Witness: The coke produced for sale would be from 180 to 200 tons.

Q. About how many chaldrons per day?

A. Well, if it were 200 tons, it would be 300 chaldrons.

Q. What is the area of Block 1090, Lot 23, available for the storage of coke?

Mr. O'Brien: Same objection.

The Master: Same ruling.

A. 15,062 square feet.

Q. About how many tons of coke would that hold in storage? 24063

A. About 2,000 tons.

Q. That would be storage for how many days production of coke?

A. Twelve to fifteen days.

Q. Referring to Block 1647, the 65th Street holder station, the land occupied primarily by the six small holders, what use of that property is contemplated.

The Master: Is what?

Mr. Ransom: Contemplated.

Mr. Chambers: I object to that as incompetent, irrelevant, immaterial. We are not concerned here with that. We are concerned with what is used now or useful.

Q. For what purpose has that land been made available?

Mr. O'Brien: Are you changing it to the past tense now?

The Master: I will hear what Mr. Woods says.

Mr. O'Brien: Exception.

24065 The Witness: I have indicated just on my memorandum here—I may be wrong—

Mr. O'Brien: Well, never mind that memorandum, Woods. I object, your Honor, to the witness reading.

The Master: I will take the witnesses' answer.

The Witness: I have noted here Block No. 1157, and I wonder whether I made a mistake in putting that block number down.

Q. 1157, I think my note here is wrong.

The Master: What do you contemplate using that for?

24066 Mr. Chambers: Block 1157.

The Witness: There are two things in contemplation in that, your Honor.

Mr. O'Brien: You mean in whose mind?

The Master: What two things?

The Witness: Since the 44th Street plant has been closed down we haven't the gas making facilities on the west side of the city that we had heretofore, and we believe that we ought to have an increased storage on that side. The question involved at the present time is as to whether or not it should be located at 65th Street,

which would occupy almost entirely that particular plot, which is about 200 by 300, or to acquire property further down in the neighborhood of 18th Street. We have not fully decided whether that would be a better location. If it is ultimately decided to put the holder at West 18th Street, the intention at the present time is then to build a warehouse for the handling of fuel, appliances, etc., and make one general warehouse at the 65th Street place.

By the Master:

Q. When you were here before you told us about 24068
the capacity of the Astoria plant. My recollection is that you said the coal gas plant had a capacity of twenty million, and the water gas plant a capacity of thirty million?

A. That is right.

Q. And my recollection also is that you said you did not use the Astoria plant to capacity, because that would involve cutting down all or part of some of the other plants, and you did not want to interfere with the other plants too much. Do you remember that?

A. Yes.

Mr. O'Brien: Your Honor will permit me 24069
to demur to the opening up of this matter?

The Master: Yes.

Mr. O'Brien: And an exception to your proceeding.

The Master: Yes.

Q. Now, what I wanted to ask you before this case finished, was this: If the coal gas unit over there was twenty million capacity, was operated under ordinary circumstances under its full ordinary working capacity, what do you expect to produce? You do not expect to get out the whole twenty millions, do you?

24070 George E. Woods, Cross.

A. You mean over an average of a year's operations?

Q. Yes.

A. I think the maximum would probably be—I think it could physically be operated, your Honor, to the extent of 75 per cent. If during the summer time we could dispose of that gas through our transfer facilities over here and get it to the points where we would need it. That would be an element that would enter into it during the small summer load, operating at that point, as a matter of distribution of the gas
24071 in this section with the plants shut down.

Q. You know conditions pretty well, don't you?

A. Yes.

Q. Well, what would you say was the normal working capacity throughout the year of the Astoria plant, would you say it was as much as fifteen million or eighteen million?

A. Of the combined plants?

Q. No, of the coal gas.

A. At 22 candle power?

Q. Yes.

A. If we made an average of eighteen million a day, we would probably have to produce about, I
24072 should say, 45,000,000 cubic feet of water gas in order to assure us of a 22 candle power gas. The 45 and 18 would be 63,000,000 feet, which would be more gas than we sell, with all the combined companies, during the summer, your Honor. In other words, our combined sales of the entire outfit during the summer months, July and August, will get down under fifty million.

Q. I am talking now of an average during the year.

A. Yes.

Q. I have forgotten, and I have not spent the time to get your testimony, just what you said was the percentage of output in the Astoria plant compared with its maximum output?

A. The percentage of output of Astoria compares about the same as the percentage of the other plants.

Q. I don't care about that either. The maximum capacity of the plants in Astoria is fifty million a day?

A. That is right.

Q. Now, you could not get, however, fifty million a day every day in the year, could you?

A. We could not. 24074

Q. What will you average, if you run them to capacity over there, having in mind your requirements everywhere and discarding and disregarding all other plants, as to whether you want to keep them going or not keep them going?

A. You mean disregarding the other companies' plants?

Q. Yes, disregarding everything. I am trying to get the basis of determining what the plant can be efficiently run at.

A. I would say as an average, an average for the year, 75 per cent.

Q. That would mean throughout the year 35 or more millions per day? 24075

A. 37 1/2 millon, would it not?

Q. About 37 1/2 million a day average.

A. Right.

Q. Do you know what your average was over there for 1918?

A. I do not know whether I have it here or not. I think I have a memorandum. (Taking paper from Mr. Ransom.) For 1918 the average was 26,725,000

Q. 26,725,000 a day?

A. Yes.

24076 George E. Woods, Cross.

Q. As against what you say could be done over there of 37 1/2 million?

A. In 1918 our capacity was 45 million a day, instead of 50, and of that 45 million the United States Government was using 5 million, bring it down to 40. The capacity of the water gas plant now is 30.

Q. Whatever that may be, your production averaged 26,725,000 per day?

A. Right.

Q. Assuming that the actual cost of making those 26,000,000 average a day throughout the year—I want
24077 to make a figure that will not indicate what is in my mind one way or the other, and I am taking 50 cents, without regard to what any of the evidence shows—

Mr. O'Brien: Of course I am not assenting to this examination. I am excepting to it.

The Master: Yes.

Mr. O'Brien: I am objecting to the whole line of inquiry.

Q. Suppose that the gas turned out at the Astoria plant during 1918 averaged 26,725,000 cubic feet a day and had cost 50 cents per thousand cubic feet, how much would the gas cost on the same basis of the cost of material, the cost of labor and the rest of it, having in mind that you probably would not need the same
24078 proportionate amount of labor for an increased production, if you had your production up to 75 per cent right along, or 37 1/2 million a day? How much would you say in the cost of making the gas?

A. Will you let me answer that in my own way, your Honor?

Q. Yes.

Mr. O'Brien: Of course I am objecting to this, your Honor.

Mr. Chambers: How much he would save over the 50 cents?

The Master: Under the 50 cents.

Mr. Chambers: How much he would cut the 50 cents down?

The Master: Yes.

Mr. O'Brien: Are we to treat this afterwards as a direct-examination?

The Master: Yes, treat it any way you like.

Mr. O'Brien: I object to it. It is unusual and I object to it. Judge Ransom seems to be a little bit doubtful as to whether he objects or not.

Mr. Ransom: I may want to ask some ques- 24080
tions myself.

The Master: I do not care whether all of you object; I want this as a matter of information for myself.

A. In that all the plants that we have—we need all of them. In other words, we are short of capacity today. So that we must maintain our personnel for the operation of these plants, we must have superintendents and foremen and so forth. So that if we are to operate them we must have them. So if we make gas at Astoria and shut these plants down our overhead will be exactly the same.

Q. I am not talking about overhead at all. What 24081
I am speaking about is this, Mr. Woods, and just listen to me. I am taking the Astoria plant separate and apart, as a distinct unit, and I am assuming that it cost you for material and labor, after your return from residuals, 50 cents a thousand cubic feet during the year 1918, when you were getting out 26 million a day instead of 37 million, average.

Mr. Ransom: You could not get out 37 under the conditions in 1918.

The Master: I did not say you could. I am trying to find out what difference it would make

between running a plant to the extent of 25 million out of the possible 40 that Mr. Woods has testified you had last year, and what difference it would make out of a possible 37 that ordinarily he would get out of it if he were let alone and the government was not there.

Mr. Ransom: He has not said he would get 37 million out of it if he were let alone and the government was not there.

The Master: I am going to get this information in my own way from Mr. Woods.

24083 A. The actual coal, oil and labor I think would be the same. That is the general manufacturing labor. Our repair account would be exactly the same on apparatus in cost per thousand. We would be using the apparatus for a greater period of time, so that ultimately the cost per thousand of apparatus would be less—it would be just the same. If you were to take the buildings and such items as that, where you have a greater divisor, as the result of the larger make, you would have lowered cost per thousand in repairs on those items, so that there would be some saving in the cost per thousand on that basis. It would be somewhat less than if it were the other way. I should say

24084 it might represent a half a cent. What I want to bring out, your Honor, when I speak of overhead, is referring to the upkeep of the plants over here, the main thing, our superintendence, and so forth, that the final result would be approximately the same. That is, what you have saved over there you would have lost in production cost over here.

Q. What bothers me, Mr. Woods, is that you have a certain number of men that you need to make this twenty-six million per day average—laboring men?

A. Yes.

Q. Shoveling coal into these furnaces and shoveling it into these retorts and all that sort of thing?

A. Right.

Q. Do I understand you to say if you increase the production from twenty-six to thirty-seven million a day you have got to increase the number of men, to produce that gas?

A. Absolutely.

Q. In the same proportion?

A. Yes. There are so many men for putting the coal in, so many men for taking it out. There would be some slight reduction in the overhead. When I 24086
speak of overhead I mean we have three men who can operate at eighteen million and those three men would operate at twenty-five million. You would get some economy there. There are a certain number of men that we have, irrespective of capacity.

Q. Leaving aside superintendence, do I understand you to say—leaving aside interest on invested capital or anything else and taking only the labor to make the gas, the laboring class outside of superintendence—that whether your plant is operated to ten per cent, twenty, forty or fifty of its capacity does not make a bit of difference?

A. The difference would be slight; it would be very 24087
slight.

The Master: We will adjourn until tomorrow.

Mr. O'Brien: Is your Honor's rule about the length of sessions to extend also to our session tomorrow?

The Master: Yes.

Adjourned to December 4, 1919, at 9:30 o'clock A. M.

Last Complainant's Exhibit No. 387.

Last Defendants' Exhibit AA-31.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 24091

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 4, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 24092
MR. O'BRIEN, Counsel for defendant Swann.

GEORGE E. WOODS, resumed.

DIRECT-EXAMINATION CONTINUED BY MR. RANSOM:

Q. If it were practicable with the existing transfer and distributing facilities to make a larger part of your gas at Astoria, and you increased the manufacture of gas at Astoria from a daily average of 26,000,000 cubic feet to 37,500,000 cubic feet of gas, 24093 and correspondingly decrease the manufacture of gas at the Manhattan plants of the Consolidated Company, would any reduction result in the cost to the complainant company of the gas sold by it?

A. There would not.

Mr. Chambers: I object to that as being too indefinite and uncertain and a supposition.

The Master: I will allow it. It occurred to me last night, Judge Ransom, as I thought of this case, that I had asked Mr. Woods these same questions when he was on the stand before. I would not waste much time on it now.

24094 George E. Woods, Cross.

Q. In your opinion would such a plan of operation result in an increased hazard of interruption in gas service to the consumers of the complainant company?

Mr. Chambers: To that I make the same objection.

The Master: I will sustain that. He has already explained that.

Mr. Ransom: Exception. That is all.

CROSS-EXAMINATION BY MR. CHAMBERS:

24095 Q. Mr. Woods, the piece of property you spoke of, Block 982, that was Lot 13, was it, that you were speaking of? You did not say what lot—the first one you spoke of yesterday?

A. Block 982.

Q. That is used in connection with the 14th Street coke plant which is not now in operation?

A. Right.

Q. And has not been for some time?

A. No.

Q. Of course you do not need any area for the storage of coke when you are not operating the plant?

A. That is right.

24096 Q. You spoke of the fact that you needed it to store coke, you needed some area, that would mean, of course, in case you are operating the plant?

A. That means that our maximum requirement would require the operation of the 14th Street and 42nd Street plants.

Q. If it was in operation?

A. We require them for our maximum operation.

Q. When you are in operation. You don't need any storage for coke when you are not in operation?

Mr. Ransom: But he says they have to have those plants.

A. No.

Q. And that is true of 42nd Street?

A. That is right.

By the Master:

Q. That is true of all this area that you were talking about yesterday?

A. That is right.

Q. And all this area to which you referred yesterday has reference to plants not now actually in operation?

A. That is right.

Q. And you don't need that storage unless they are in operation to the maximum requirement? 24098

A. If they are operating to some extent we would need some of it, we would not need the full amount of it unless it was operated to the maximum requirement.

Q. So you really don't need the land there at all unless you want the plants to operate?

A. If we did not expect to operate the plants we would not need the land.

By Mr. Chambers:

Q. I understood you to say yesterday that it was possible for the Astoria plant to make sufficient gas to take care of the needs of the Consolidated if it ran to full capacity? 24099

A. I did not.

Q. You did not say that?

A. No. The maximum send-out of the Consolidated Gas Company is about ninety million cubic feet per day, and the maximum capacity of the Astoria plant is fifty million cubic feet a day. As a matter of fact the combined capacities of all the consolidated plants, including 14th Street and 42nd Street, is ninety-three and one-half million cubic feet, and our maximum send out has been eighty-nine million cubic feet, so that, including the 14th and 42nd Street plants

24100 George E. Woods, Cross.

our reserve was down to four million cubic feet, and I think that this winter, bearing on what we are doing at the present time with the heating appliances that are going out, we are going beyond that amount.

By the Master:

Q. When you say [illegible] of the Consolidated Gas Company you mean what, 99th Street?

A. 99th Street, 21st Street, 14th Street and 42nd Street.

Q. That you say is ninety-three million?

A. Ninety-three and one-half million, including Astoria.

24101

Q. So that you have only got forty odd million on Manhattan Island?

A. We have forty-three and one-half million on this side, and fifty million over there. That is ninety-three and a half million, and our maximum requirement up to date has been about ninety million cubic feet.

By Mr. Chambers:

Q. You mean for the Consolidated Company alone?

A. For the Consolidated Company alone. The maximum requirement for the combined companies has been something over one hundred and fifty million

24102 cubic feet, one hundred and fifty million five hundred and thirty-seven thousand, I think is the figure.

The Master: What is the one hundred and fifty million?

The Witness: The combined companies on the transfer system.

Mr. Ransom: The requirement of all the companies.

The Master: I see.

Mr. Ransom: Not their production, their requirement.

The Master: Their maximum capacity is some seventeen per cent more than that.

The Witness: Our maximum capacity at the present time is about one hundred and seventy-five million cubic feet, which is about seventeen per cent in excess of our maximum send-out up to the present time.

By Mr. O'Brien:

Q. What is that?

A. I said that the maximum combined capacity is of the Consolidated and those plants connected with the transfer system, is 175,800,000 cubic feet per day. Our maximum send-out has been 150,557,000, I think. I think it is 537,000 over the 150,000,000, a reserve 24104
of 17.2 per cent, and that includes all of the plants of the Consolidated Company and the allied companies connected with the transfer system.

Mr. Chambers: I think that is all.

The Master: Have you anything, Mr. O'Brien?

Cross-examination by Mr. O'Brien:

Q. Mr. Woods, in your testimony about the 14th Street plant, in reference to coke storage, did you take the position that you need more space now for the storage of it than you did when the plant was running?

A. Mr. O'Brien, when we were operating that plant 24105
at full capacity we had more storage than we now have on all the properties with the holders removed, and that was one of the considerations of the removal of those holders, because we had lost all the property east of the New Amsterdam holder which had been condemned and taken over by the city for hospital purposes, running from that point down to the river between 15th and 16th Streets; and prior to that time we had some—I don't recall the exact amount, but probably 60,000 or 75,000 square feet more than we had with our combined property there at the present

time. Understand that we had that property between 15th and 16th Streets, just east of the Amsterdam holder, which we used at that time for the storage of coke and oxide. We had a fire brick grinding machine, and general storage purposes, that went from there down to the river, which we haven't got at all at the present time.

The Master: Mr. Woods, just answer the question yes or no, if you can.

Q. Then you used that up to what year?

A. Well, I would not recall the year. We have not

24107 operated those plants to full capacity since—

The Master: Now, you don't recall the year. That is an answer to the question.

Q. You have been running the plant since that property was taken by the city?

A. Yes.

Q. But not at full capacity?

A. We did not.

Q. At what capacity have you run it since that property was taken over by the city?

A. From 20 to 25 per cent capacity.

Q. How much of the space in the westerly block there of the 14th Street station is rented to the Eagle

24108 Pencil Company?

The Master: I will not allow that. It does not bear upon the testimony given by this witness. He has testified as to the amount of space they need. I am not going to let him go into side questions as to what space they rent.

Mr. O'Brien: I want to bring out how long they have been renting it, that is the next question.

The Master: It is not proper cross-examination of this witness.

Mr. Ransom: The terms of this lease were gone into.

The Master: I don't care, I will not take it at this time. I will let you cross-examine as to the matters he testified to yesterday, that they require a certain amount of storage space, any question that is pertinent to that.

Mr. O'Brien: Exception.

Q. Will you give us the capacity and the maximum daily send-out of the 21st Street station?

The Master: That has already been covered.

Mr. O'Brien: You mean on this cross, your Honor?

The Master: I won't let you go into it at this 24110
time.

Mr. O'Brien: Exception.

Q. When you spoke about the combined capacities of the complainant and the companies on the transfer system, will you state the companies that you included in that description?

The Master: I won't take that; it is fully on the record.

Mr. O'Brien: Your Honor, I would like to have that made clear. I don't recall it.

The Master: It is perfectly clear on the record. I could name them to you myself but I won't take the time to do it. Next question. 24111
There is no question in the world as to what companies are on this transfer system.

Q. Will you state what the capacity of the New York & Queens Company is?

The Master: Question not allowed. That is not on the transfer system, is it?

The Witness: No.

Mr. O'Brien: Your Honor, it is an affiliated company.

The Master: I have ruled on it.

24112 George E. Woods, Cross.

Mr. O'Brien: There isn't any reason why so far as we know on the record that it should not be on the transfer system.

The Master: I have ruled on it.

Q. Have you ever taken up in an official way the proposition of using the New York & Queens Company on the transfer system?

The Master: Question not allowed.

Mr. O'Brien: Exception.

Q. Will you state the capacity of the New York & Queens and its daily send-out?

24113 The Master: Question not allowed.

Q. Mr. Woods, was it not the plan of the complainant when they erected the plant in Astoria to provide there the instrumentalities for supplying all the gas that the complainant needed?

The Master: The question is not allowed. We have been all through that. I will not take any more.

Mr. O'Brien: This bears directly upon the question of the things that were brought out yesterday.

The Master: No. If it does, it is already in the record, it does not have to be repeated, we

24114 have been all through that.

Mr. O'Brien: Well, I submit that it is proper. It is connected with the cross-examination, which was not covered.

The Master: I think it was covered. When it is once in the record, if it bears on what he testified to yesterday, it bears on it just the same as if it is repeated.

Mr. O'Brien: I say with the same positiveness that what he has stated on the stand has been practically in the record. He has been brought in here to revamp his testimony, and

why shouldn't I be allowed to cross-examine him?

The Master: Everything he has said was on the record except his testimony that it requires a certain amount of storage area at these plants if they are in operation. That is the only thing that is new.

Mr. O'Brien: But your Honor brought out several things new. Your Honor went into an examination over my objection—

The Master: I recalled last night as I thought it over, and while Mr. Woods was speaking it 24116
brought back to my mind that I had asked him the same questions when he was on the stand before, and he gave the same answers. In other words, my mind has been running always in that direction, and apparently I asked him about it, and then forgot it, but kept it in mind, and I intended to ask him again when I got a chance, and as soon as he started to talk I remembered that I had asked him the same thing before.

Q. Mr. Woods, how much unoccupied area have you got at Astoria today?

The Master: That will not be allowed. It is in the evidence. Well, I will take it as the 24117
quickest way.

Q. You have a good deal of unoccupied space over there?

The Witness: We have.

The Master: A good many acres?

The Witness: We have.

Q. You have the foundations of a holder already built?

The Master: I will not allow that.

Mr. O'Brien: I don't think it is in the record.

The Master: All right, have you?

The Witness: We have.

Q. Of what capacity?

A. The tank is designed for a holder of 15,000,000 cubic feet capacity.

Q. Has the government been taking any gas—using any of the gas at Astoria during the past year?

The Master: Not allowed. You have covered that.

Mr. O'Brien: Exception.

Q. When did you cease to supply the government

24119 any gas at Astoria?

The Master: Question not allowed. Mr. O'Brien, have you any questions directed to the question raised—

Mr. O'Brien (interrupting): This is directly bearing on the questions and answers of yesterday afternoon, your Honor, I respectfully submit.

The Master: Have you any question directed directly to the testimony given by this witness that if his 14th and 42nd Street plants are not into full operation he requires a certain amount of storage space?

24120 Mr. O'Brien: I talked to him about that, and I understood your Honor had shut off further questions.

The Master: Have you any further questions you want to ask?

Mr. O'Brien: I wanted to take up that question on many grounds and very many angles.

The Master: Well, what ground and what angle?

Mr. O'Brien: I wanted to find out the send-out of that plant from year to year; I wanted to find out, and I tried to get that out through a ques-

tion I asked which you overruled, just when they ceased to use the property that was taken over by the city.

The Master: What else?

Mr. O'Brien: I want to find out the extent to which they have rented out properties.

The Master: What else?

Mr. O'Brien: The date when they first extended—began to lease to the Eagle Pencil Company; the question as to the capacity of the Mutual plant which is in that neighborhood.

The Master: What else? 24122

Mr. O'Brien: And the area about that.

The Master: What else?

Mr. O'Brien: Well, that leads up to a number of questions, your Honor.

The Master: If that is all you have got, I will excuse Mr. Woods.

Mr. O'Brien: Well, that is not all I have. I cannot in advance of my examination—what will develop in the examination will lead to other matters, and I cannot give you in detail here, anticipating the answers of the witness, every question that I may ask him, your Honor.

The Master: I won't allow any question. 24123

Mr. O'Brien: That does not embody all the questions I want to ask him on that subject.

The Master: I won't allow any questions on those subjects. If you haven't any other line of attack, I am going to excuse Mr. Woods.

Mr. O'Brien: I attempted to go into the question of the 21st Street plant, and I understood your Honor would not allow me to ask anything about the 21st Street plant, its storage capacity—

The Master: If you believe that a line of inquiry will land you anywhere by asking him how

24124 George E. Woods, Cross.

he figures that capacity, what he bases it on, how he arrives at that conclusion, where he gets his figures from, how much coal he figures he needs for how many days, or anything of that sort, I will let you ask him. The questions you have asked and indicate you want to ask, I won't let you ask.

Mr. O'Brien: Well, I note an exception to your Honor's ruling and to the limitations you place upon my cross-examination.

Q. Mr. Woods, did you in figuring the capacity
24125 for the storage of coal, take in the yard at the 14th Street station in the same block with the office and the carpenter shop?

A. Some current supply there, yes.

Q. Have you got a diagram here of the 14th Street station that will show just what your computations were based on, the area covered?

A. No, I have not.

Q. You gave us first, as I recall it, the computations on Block 988, did you?

A. 982, I guess it was.

Q. How much of Block 982 did you take to produce the capacity for coal which you figured out on that
24126 block?

Mr. Ransom: I object to the question as meaningless.

The Master: You said that there was available for storage in Block 982 54,000 square feet. Where is that located?

The Witness: That is from the westerly end of that property extending in an easterly direction.

The Master: How far?

The Witness: I do not recall just the exact distance. I have not got an exact figure here, your Honor.

Q. Didn't you bring the basis of your computations here?

A. No, I simply made a rough memorandum as to the calculations that I made.

Q. Can you say what proportion of the block you intended to use when you said that there was available that amount of space?

A. Yes. As I recall I said that in that block available for storage was something like—the figure that I have here is 74,480 square feet, of which 20,000 square feet would be used for the storage of oxide or the purification, and the remainder of 54,480 square 24128
feet for the storage of coke.

Q. Where did you get the first figure, what dimensions did you use for the first figure?

A. I got those from the maps.

Q. What were the elements entering into that computation?

A. What do you mean, to get the square feet?

Q. I want the space that you figured up there to be available?

A. I figured out about 75,480 square feet.

Q. Did you take all the space except that occupied by the building on the east end of the block?

A. No, I left a little room there, and allowed 24129
20,000 square feet out in—the area of the entire block is 89,711 square feet.

Q. How much space did you calculate to leave unoccupied outside of the—I mean unused for oxides or coal storage, outside of the portion occupied by the buildings that are there now?

A. I proposed to use all of the space?

Q. To what height?

A. The height varies dependent on how high you you put it. On the average the height would be from 11 to 12 feet. You know, it would be higher than

that in some places, but taking the entire area it would be around that figure.

Q. Only 11 or 12 feet high?

A. That is right. Of course, you could not—

Q. (Interrupting.) Doesn't your coal pile at the 21st Street station run up to a height of 40 feet?

A. It does.

Q. Is there any reason why coal could not be piled to that height in a portion of this lot?

A. I was speaking of coke and not coal, to start with.

24131 Q. Well, coke.

A. Yes, you could pile it, but when you—

The Master (interrupting): Just answer it. You could.

The Witness: Yes, it could be piled; it might be piled 80 feet.

Q. Now, did you contemplate using this block for any coal at all?

A. No.

Q. Block 982?

A. No.

Q. Why did you contemplate putting all the coal in the one shed and no coke, and the coke out here in

24132 this block in the open space, Block 982?

A. Because that was the available space for it.

Q. Why available?

A. Because it is there and available.

Q. Why preferable to the coal shed?

A. Because we are going to put coal in the coal shed.

Q. Is there a particular reason, engineering or economic reason, for putting coal in the coal shed and storing the coke in the open space in Block 982?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it.

Mr. Ransom: Exception.

A. Why, yes.

Q. What is it?

A. The coal shed is designed for the receipt of coal and for the purpose of getting coal from the coal shed into the retort house.

Q. Wouldn't you use the coke, too, in the manufacture of coal gas?

A. Yes.

Q. You would have to cart that in, too?

A. No.

Q. Well, then, on what did you predicate a demand for the space which you have alloted to the oxides? 24134

Mr. Ransom: Objected to as meaningless.

The Master: I will allow it.

Mr. Ransom: **Exception.**

A. It would require that space for the taking out and the emptying of boxes and the reviving of material, turning the stuff over and preparing to put it back with some new material.

Q. How did you figure that out? Was it based on a certain output of the spent material per day?

A. No. That material is taken out covering that area to cover the material taken out from those boxes, where it is brought out and levelled over at a height of anywhere from 18 to 24 inches and turned over, 24135 and it would require and we have required when we did operate, that amount of space.

Q. Then you say you need 20,000 square feet of space, approximately, for that purpose, because you used that much before?

A. Yes, it is a practical—

The Master (interrupting): That is an answer.

The Witness: Yes.

Q. And you would give the same answer in respect to coal and coke?

A. I testified here that when we operated before we had 75,000 square feet more than we have now.

Q. Is it the best practice in the making of gas to revivify oxides right in the boxes themselves, and not spread it out in the yard?

A. Sometimes we do it, and sometimes it is extremely dangerous.

Q. Well, how have you been doing it in this company?

A. We have done it both ways and are doing it both ways today.

24137 Q. How did you used to do it at Fourteenth Street when the plant was running?

A. We have done it both ways at the Fourteenth Street plant.

Q. What part of the block up there was used for the spreading out of oxide, Block 982?

A. The block just to the east of the purifying house, where it would be taken out of the purifying house at the east end of the purifying house and at one end of the purifying house.

Q. Why was it spread out sometimes and why revivified in the inside in the boxes when it was?

A. Because in our operations we found it neces-

24138 sary to do it.

Q. Well, I am asking you what was the reasons at the times that you found it necessary to take it out?

A. Because in the blowing of boxes, in a period of time the material gets so badly packed it creates back pressure, and you cannot get the material through it, and we have to remove it.

Q. Well, that is very infrequent, isn't it?

A. Well, if it is infrequent, you must have the space when you take it out.

Q. It would not get clogged like that if you used enough shavings in the bottom, would it?

A. Yes, with enough shavings in the bottom—you would not require a great amount of shavings in coal gas operation. In water gas you might, but in coal gas you do not need any shavings in your purifiers. If you have got proper condensing and scrubbing apparatus in coal gas production, your coal is supposed to be free from sulphur when it gets to the purifiers; in the water gas proposition it is somewhat different.

Q. Can you recollect any time in your career where they used that amount of space on that particular block at the 14th Street station for spreading out 24140
these oxides?

A. No, I do not, because we had other lots and had to carry it down into the lot between 15th and 16th Street because our holders were at that point, and we had to take it away and cart it down below and level it off at that point.

Q. Can you recall any particular period where you did use that much space between the block between 15th and 16th Streets in the spreading out of the oxides?

A. Yes, absolutely.

Q. When?

A. More. 24141

Q. When?

A. When we were operating the plant to its full capacity.

Q. At what time?

A. Prior to 1907.

Q. I mean a particular time, a particular period?

A. Any time prior to 1907.

The Master: You cannot give us any particular date, for instance in 1916?

The Witness: Oh, I could not, your Honor; no.

Mr. O'Brien: Well, I meant a period. I understand your Honor is criticizing my question?

The Master: Yes.

Mr. O'Brien: I note an exception to it.

Q. You stated on page 5889 (mimeograph copy) in speaking about the Astoria plant, among other things: "In other words, we are short of capacity today, so that we must maintain our personnel for the operation of these plants," and so forth, "We must have our superintendents and foremen." Is it a fact that with the exception of and apart from taking
24143 care of the personnel that you speak of, there is not any reason why you could not manufacture and distribute 75 per cent of your capacity at Astoria?

A. Could we manufacture and distribute?

Q. Is there any other reason why you should not be able to and you are not able to manufacture and distribute 75 per cent of your capacity at Astoria?

Mr. Ransom: I object to the question.

The Master: I will not allow that question, Mr. O'Brien, for this reason: The record is perfectly clear that there is no reason why they cannot run Astoria to capacity, except that they want to take care of other plants at the same
24144 time. It is perfectly clear. The witness told us when he was here before.

Mr. O'Brien: He has not answered the question as I put it.

The Master: The witness told us when he was here before. When that question came up I think I asked him myself, and he told us that the reason why they do not run Astoria to capacity is that, if they did that, they would have to cut down some of the other plants further than they have cut them and they do not want to do that.

Mr. Ransom: That is not the only reason he stated.

The Master: That is the substance, anyhow.

Mr. O'Brien: That was not the only reason.

Mr. O'Brien: Yesterday your Honor made it clear that we had a right to cross-examine him on what he testified to.

The Master: Yes.

Mr. O'Brien: I want to put a question that he can answer yes or no to.

The Master: I am not going to have the stuff over again.

Mr. O'Brien: He can answer that yes or no and dispense with it. 24146

The Master: But it speaks for itself. He has told us. You can run that plant at Astoria at 75 per cent capacity, without regarding any others, could you not?

The Witness: As an average for the year; I say the only thing that would affect it at all would be the question of candle power, your Honor.

The Master: What do you mean by the candle power?

The Witness: As to whether we would be able to maintain a 22 candle power. We would have to operate Ravenswood in order to help us out. 24147

Q. That would not prevent you from making and distributing 75 per cent of your whole capacity?

A. I think it could be done, yes.

The Master: All right, you have your answer.

Q. Is it not axiomatic, Mr. Woods, that with your increase in the output there is a decrease proportionately in the number of men used to make the gas?

A. Yes, that is so, because we have a certain—

The Master: No, that is so?

The Witness: Yes.

The Master: Next question.

Mr. Ransom: I think he should be permitted to finish his answer.

The Master: I will not let Mr. Woods go beyond answering the question directly. It takes up too much time.

Mr. Ransom: The answer as it stands is incomplete.

The Master: I will stop the answer at this point.

Mr. Ransom: Exception.

24149 Q. Why, Mr. Woods, did you indicate to the Master yesterday, when he was questioning you about Astoria, that the number of men necessary to make this additional capacity would increase proportionately with the capacity?

A. Why I say that?

Q. Yes. Did you have in mind some special condition or—

The Master: You ask him now, why did he say it?

A. Because it is a case, Mr. O'Brien, where in our horizontal retort house there that is operated by machines, one machine gang will operate fifty per cent

24150 of that house. They can do no more. When we go on to the 60 per cent basis or 70 per cent basis or 75 per cent basis we have got to double our machine gangs throughout. In other words, there is too much work for one gang, and there is not enough work for two. But we must have all of them running. In some cases that would not apply, in the incline house, but in the horizontal retort house we can run, that is in so far as actual labor in the retort house is concerned —we can make gas in so far as labor is concerned cheaper on a 50 per cent basis than we can on a 70 per cent basis.

Q. When you say 50 and 70 per cent basis you mean 50 and 70 per cent of your capacity?

A. Right. Now, in the incline house that does not apply to the same extent, because we put on one battery and every battery calls for so many men.

Q. And how many men does it call for?

A. We are employing now—one battery would take four men outside of the fire cleaners downstairs, which would go in about the same ratio in each shift.

Q. They are independent units, so that you could keep adding four men and four men and so on?

A. Yes, that is so. I was speaking of the other 24152
houses. You take a water gas plant and you would be running three or four or five machines; you have a gang of men, six or seven men, fire cleaners; coal handling, you have a certain number of machines we will say six machines. They go on to seven machines and they cannot do it; we have got to put on extra men. If we put on eight or nine machines it takes practically two gangs, so that when we get up in the maximum capacities they are very nearly what I mean is, if we get around 50 per cent we have just about where we can work the gang full; when we get to 70 or 75 per cent we have to have an additional gang on to do the 100 per cent capacity, 24153
because it requires a certain number of men to do the work. The runners would be about the same, and every machine you put on you would have a gas maker to look after that. We would have a man to look after the bringing in of the coal; it would be in the same proportion. The unloading of the coal would be about the same, although a little smaller, because we could not do it in the same time and we would probably have to put overtime on the coal and coke handling. The men in the pump houses would not make any difference, we would not have any more men, and there would be a reduction there. There

would be a corresponding increase in the boiler house. In the exhauster house there would be no difference, in the meter house there would be no difference, in our office there would be no difference. In foremen around there would be no material difference whatever; those are the fixed charges we would have, what I specified as being overhead, which remains fairly constant irrespective of the make.

In so far as size is concerned, Mr. O'Brien, I would venture the opinion, and I base it upon my own personal experience, that I can take three 20,000,000
24155 gas plants isolated, and I will take one 60,000,000 plant by itself, and give me the same kind of men, the same kind of supervision, the same kind of labor —we will assume that they are all the same, that the superintendent of one has as much brains and ability as another—we will make cheaper gas in those three 20,000,000 foot plants than we will in the 60,000,000. I will tell you why. Because when you get into the 60,000,000 plant you have a general superintendent and you have three or four superintendents, you have a divided responsibility, and it is one of the things that has worried me a good deal. While people say magnitude does this and magnitude does that, you
24156 have got the divided responsibility that you cannot pin the man down, because it is somebody else's job. I have been through it and I know.

Q. This difficulty is with the overhead end of it, is it not?

A. No, not particularly with that.

Q. Why do you say there is a divided responsibility where there is one large plant instead of three small units?

A. Because it is too large for one man. One man has charge of this, one man has charge of that, and the jobs intertwine. That is, you have a mechanical

department that looks after a certain amount of repairs and this and that, and a job is turned over to the repair men, and the repair men do the work. It is given to the repair men to do it, and he does it, but it is not particularly interested in it the same as a man would be if he did it himself. I do not say we do not do the work well and so forth, but my experience is we find there is more friction, more trouble in operating a plant where you have this dual or triple management, in a large plant, because one cannot look after it.

Q. You would say it was a mistake to erect and establish this large plant at Astoria? 24158

A. I do not say it is a mistake, but it is a mistake to put all your eggs in one basket or anything of that sort.

Q. Well, that is what they contemplated, did they not?

A. I do not know what they contemplated.

The Master: I will not let you get into that I ruled it out once before.

Mr. O'Brien: You are right in it.

The Master: Get out of it and stay out of it.

Mr. O'Brien: It is a very important part of this case. 24159

The Master: I have ruled on it.

Mr. O'Brien: Exception to your Honor's ruling.

Q. Mr. Woods, will you tell me now which is the more economical system of making coal gas, the horizontal or the inclined retorts?

The Master: I will not allow that. We were through it before.

Q. Will you state whether there is any engineering difficulty in making 90 per cent of your capacity at Astoria?

24160 George E. Woods, Cross.

The Master: I will not allow that. He has already answered what the difficulty is.

Mr. O'Brien: Your Honor, that was glossed over in the record yesterday.

The Master: I remember it.

Mr. O'Brien: Exception to your Honor's ruling.

Q. Were there any other reasons than those you offered yesterday why you should not run at almost your full capacity at Astoria; in other words, between 90 and 100 per cent of your full capacity?

24161 The Master: I will not take it.

Q. Any reasons other than those you stated yesterday?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. You do not mean to say that your handling expense, your handling labor, would be the same if you were running at 75 per cent of your capacity—I mean would be increased proportionately?

A. Why, I can see where it might be more.

Q. You mean on occasions?

A. On occasions it might be. For instance, Mr. O'Brien, if we were running on a 50 per cent basis

24162 and on a 60 per cent basis, 50 or 60, whatever it may be, and we could do that work in eight hours, the handling of this labor, getting coal into the retort houses, getting coke into the generator house, and we went on to a 70 or 75 per cent basis, then we would have to put on an extra gang of men to do it. Now, we would not have enough work to keep those men steadily employed. Those things resolve themselves now at times, that instead of having the men work eight hours we work them nine, ten or eleven hours, and pay them time and a half for the extra hours, so we would get up. There are periods where for a time it would cost you more money.

Q. You do not have to multiply the machinery that you have there to take care of this seventy-five per cent capacity?

The Master: What do you mean, multiply the machinery?

Mr. O'Brien: The machinery for handling coal and handling materials.

A. You are discussing operation, not investment.

Q. I am talking about coal handling, Mr. Woods. A great percentage of your coal handling is done by machines instead of men, is it not?

A. It is a dual proposition. 24164

Q. How many men are you using on coal handling today in Astoria?

A. I could not tell you offhand.

Q. Approximately how many?

A. I could not tell you.

Q. Would you say how many men you are using in the handling of coal in the coal gas end of the business over there?

A. I would not undertake to.

Q. Would you approximate it?

A. No, I would not approximate it.

Q. But you made up hypothetical figures, did you not? 24165

A. Yes, and I could make calculations and tell you, but I would not approximate it now. I do not know what they are doing.

Q. You say you cannot even approximate, within 10, 15 or 25, the number of men engaged in the handling of materials for the coal gas end of the business there and the water gas end of it?

A. Yes, I can approximate it. I do not know whether they are unloading any coal today or not.

Q. How many men does it take to operate that huge

crane, if I may call it such, that transports coal from the lighters in to the coal pile?

A. One man.

Q. And in a day how much coal does he transfer from the lighters into the piles, the maximum?

A. Oh, a machine like that will handle 900 or a thousand tons.

Q. And the transferring of the coal from the coal pile into the retort houses is all done by machinery, is it not?

A. A good bit of it.

24167 Q. And they are not being used to their capacity, and would not be if you were making seventy-five per cent of the capacity of Astoria?

A. Oh, not on a 24 hour operation, no. But we could not do it in an 8 hour operation.

Q. Did you hear Mr. Bradley's testimony in the former case, Mr. Woods?

The Master: The question is not allowed.

Mr. O'Brien: Exception. Your Honor will not allow me to go into the question of the plans at Astoria, the plans that were adopted, and the purpose of establishing the plant there, the capacity that the plant would have and the purposes

24168 they had in erecting it at Astoria?

The Master: I will not.

Mr. O'Brien: I take an exception to your Honor's ruling, and state that I propose at this time to examine the witness with regard to the plans of the company, as expressed by Mr. Bradley in his testimony in the last case; the plans and purposes in establishing the plant at Astoria, the capacity that the plant had there, producing forty million feet a day—

Mr. Ransom: I object to the statement.

Mr. O'Brien (continuing): And to find out to what extent the witness differs from the testimony of Mr. Bradley given in that case.

The Master: I have made my ruling.

Mr. O'Brien: I note an exception.

Q. What is your maximum capacity for the storage of oil at the present time at Astoria?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Are you using your total capacity for the storage of oil at the present time?

The Master: Where? 24170

Mr. O'Brien: At Astoria.

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. How do you reconcile your statement on page 5889 (mimeograph copy) of the record: "In that all the plants that we have—we need all of them," with the plans and purposes and statements made by the officers of the company, when they were establishing the plant at Astoria, that they intended to take all the plants off Manhattan?

The Master: The question is not allowed. You may leave the stand, Mr. Woods.

Mr. O'Brien: Exception. 24171

The Master: Mr. Teele, take the stand.

Mr. O'Brien: I have one thing, your Honor.

The Master: For whom, Mr. Teele?

Mr. Ransom: No, there is one thing I want to ask Mr. Woods.

Mr. Clark: I want to ask a question.

The Master: Do you want to ask a question, Major Clark? I did not think you did.

Mr. O'Brien: Your Honor will permit me to make the record?

The Master: What do you want to do now?

Mr. O'Brien: I want to continue the examination of the witness Woods.

The Master: Mr. O'Brien, I do not recall your ever having finished with a witness. I state on the record that it is apparent to me that you have no other useful question. I decline to permit any further question of the witness. Major Clark will ask him some.

Mr. O'Brien: I state at this time that I intend to pursue the examination of the witness and to go into matters not only covered by his testimony
24173 yesterday but by his testimony when he was formerly on the stand, your Honor having permitted the complainant yesterday to reopen the testimony of the witness by bringing him back on the stand to modify his testimony previously given.

The Master: I have made my ruling, Major Clark.

Mr. O'Brien: Exception.

The Master: You are forcing me to cut the cross-examination of every witness by your tactics, Mr. O'Brien, and I shall assume responsibility for doing it.

24174 Cross-examination by Mr. Clark:

Q. Mr. Woods, you will recollect that Col. Haywood questioned you about the cost of making gas at Astoria, as shown in the Public Service Commission reports.

A. I think he did ask me some questions.

Q. I show you the 1918 report of the Astoria Light, Heat & Power Company and ask you to state what the cost shown there for making a thousand feet of coal gas and a thousand feet of water gas is?

The Master: How does that bear upon anything testified by this witness yesterday or today?

Mr. Clark: Well, I think it is very important, your Honor, because at the time this was brought up by Col. Hayward we did not understand what importance your Honor was going to place upon the cost of making gas at Astoria.

The Master: I will not allow the question. You can offer this report in as an admission—Oh, it is an Astoria report?

Mr. Clark: Yes.

Mr. Ransom: I will consent that it go in. 24176

The Master: Judge Ransom making the statement that he has no objection to the Astoria report going in, I shall not allow this question, but will receive it in evidence if it is offered.

Mr. Clark: Well, the point I wanted to develop was when Mr. Woods was last on the stand he stated that the entire cost of the coal gas enrichment was not stated on the report, and I wanted to show by him what the difference would be if it were stated on the report, so that we could—

The Master: I will not take it. It is not proper cross of the matter brought up here now.

Mr. Clark: Can I recall Mr. Woods for that purpose? 24177

The Master: What is your purpose?

Mr. Clark: In view of the Master's attitude with regard to Astoria, it seems important to show what the cost was.

The Master: What is your purpose? I will entertain a motion now to recall Mr. Woods for any purpose that will be useful in this case. What is the purpose of your cross; what do you want to bring out?

Mr. Clark: Showing the cost at Astoria, as shown by the reports of the Astoria Company.

The Master: You say that is in conflict with what he said?

The Witness: What page was that?

Mr. Clark: Page 54.

The Master: You say that is in conflict with what he stated as the cost?

Mr. Clark: Yes, it is in conflict.

The Master: I will take it. I will let you recall him for further cross.

24179 Mr. Ransom: Do you mean now?

The Master: Yes.

The Witness: This is for the year 1918, Major?

Q. Yes.

A. My recollection is, Major, that I testified—what I wanted to testify to was the fact that for 1918 the cost of enrichment was included in the coal gas, but it was not for 1917. That is my recollection.

The Master: Wait a minute. On page 54 of this 1918 report, where is it shown the cost of making a thousand feet of gas?

Mr. Clark: At the very bottom of the page.

24180 The Master: What does it say?

Mr. Clark: 28.65 for coal gas and 42.90 for water gas.

The Master: 28.65 for coal?

Mr. Clark: Yes.

The Master: And what?

Mr. Clark: 42.90 for water gas.

The Master: And twenty-eight what?

Mr. Clark: 28.65.

The Master: Your question is, how does he reconcile that with the statement that the cost is in excess of that for 1918?

The Witness: I do not know what this figure is. My recollection of coal gas cost at Astoria for 1910 was thirty-two something. I have forgotten the exact figures.

Mr. Ransom: That is including enriching?

The Witness: That is including enriching. I do not know whether the enrichment is in that or not.

Q. You will see, if you examine that, there is an enrichment charge there of 3.87 on the coal gas.

A. Well, if it is only 3.87, I should say it was not all in. 24182

Q. If you will turn to page 12 of the report you will find how much of the coal gas enrichment is excluded. Only the Ravenswood enrichment is included there.

The Master: Why don't you offer this report, or read in what you want? That is the quickest way to show it.

Mr. Clark: I want to show by his own admission as an expert what the enrichment would be if the entire enrichment was there, and what the corrected figures should show. The difficulty with the report is that it does not show the actual cost of water and coal gas; it shows 24183 accurately the cost of the two together, but the entire enrichment of the coal gas is not included in those figures.

Mr. Ransom: It shows what the Commission requires the company to show.

The Master: This shows that the gas per thousand cubic feet, of the combined gas, is 38.47.

Mr. Clark: Yes.

The Master: That is the combined figure.

Mr. Clark: That is the figure combined.

The Master: Do you question that?

Mr. Clark: It is not that figure that I wanted to question; it is the difference between the coal and the water gas, which is not correctly stated there.

The Master: Ask your questions. I am willing to take anything bearing on that. I want to find out what it costs to make gas in any way I can.

Q. Mr. Woods, page 12 of this report has a notation as follows:

24185 "Gas sold to the Consolidated Gas Company as measured at this company's station meters. Point of delivery is at the New York end of the tunnel," etc. "The New Amsterdam Gas Company charges us for enriching gas, such charges including the invoice cost of oil used by them for our account, less an allowance for the value of residuals produced by reason of the employment of such oil, plus a charge of ten per cent. The amount of such bills for the year 1918 was $118,932.36, as shown on page 55, line 12 of this report. Gas enriched 1,175,313,800 cubic feet. Gas oil used 2,017,112 gallons. Cost of oil used, $131,353.74. Oil tar produced 367,185 gal-

24186 lons. Value of oil tar produced, $21,966.31. Drip oil produced, 13,173 gallons. Value of drip oil produced, $1,267.10."

On page 55 of this report, on line 38, you find the figure of 3.87 cents, which represents, I assume, the reduction of that $118,000 to cents per thousand; is that correct?

A. I should imagine that is what it was.

Q. Is that so?

A. I should imagine so.

Q. Could you state what the cost of enriching the entire amount of coal gas produced in that year would be?

Mr. O'Brien: Your Honor, I would ask that the record note the fact that the witness proceeded to get a memorandum from some place in the court room.

The Witness: The memorandum does not help me, because it is not here. What was the coal gas cost? I mean the total gas cost that you have there?

Q. 28.65 cents.

A. What was that enrichment cost?

Q. 3.87.

A. I think, Major, from the figures that I have 24188
here, and I think that they are correct, that the enrichment would have been about 8.9 cents per thousand.

Q. That is total enrichment?

A. Yes. I think that is right. I may be wrong, but I think that is approximately correct.

Q. Then if you deduct that 3.87 from 28.65 and added your 8.9, you would get—

A. The cost of the—

Q. The cost of the coal gas enriched?

A. But my recollection was, it was 33.78. That is the way I made the calculation.

The Master: That would pretty near reach the 24189
same figure, taking 3 from 28, that is 25, and add 8.9, that is 33 plus, which is just about the same figure.

Mr. Clark: Which he gave before.

The Master: He says he figured now 33 plus.

Mr. Clark: That would also cause a reduction in the cost of the water gas there?

The Witness: It would.

Q. Can you tell me what that reduction would have been?

A. I think that water gas cost for that year—

Q. What memoranda is that that you have, Mr. Woods?

A. It is just a memorandum I made up to see what difference there would be in our operations if we had operated the Astoria plant during the year 1918 at 75 per cent capacity and during the eight months of 1919 at 75 per cent capacity during that period, and I just collected some figures together to get the cost, the Astoria cost, as I have indicated here, for the year.

Q. You mean for the water gas?

24191 A. Yes.

The Master: The Astoria water gas cost?

The Witness: It was 40.62, Major.

Q. 40.62, and here you have it 42.99.

The Master: Well, he is taking out the enrichment; he is making that deduction.

The Witness: The combine of the two, as I have it here, is 38.031. Is that the figure that is there?

Q. No, it is 38.47 here.

A. Well, then my figure may be—well, yes, that would be different, that figure that I have here: 38.47 is right. This is not, this is a figure I made from

24192 another calculation based on something else.

Q. Did you make the same calculation on the report for the year 1917 and 1916?

A. I could not do that, Major; I haven't that information. It could be made, but I haven't it with me.

Q. You haven't that information with you?

A. I haven't the information with me.

Q. What information would you need, the cost of gas oil? A. Well, I have the cost of—I think what I would have to do I would have to look up to get—I could look up and get the amount exactly, but I

would not undertake to tell you what it was without looking up the figures as to the quantity, the exact quantity, that was used. I would not like to say

Q. Would you make that calculation and bring it in here?

The Master: No, I will not let him do that.

Mr. Clark: The figures are all here, your Honor. He can do it on the stand.

The Master: Well, then, I won't have him make the calculation; you can make it.

Mr. Clark: He could make it as an expert. 24194

The Master: I won't let him do that.

Mr. Clark: I offer the report of the Public Service Commission, Cost of Astoria Light, Heat & Power Company for the year 1919.

The Master: Have you any objection to that, Judge Ransom?

Mr. Ransom: Not if 1918 is included, concerning which he has already been interrogated.

The Master: Judge Ransom has a right to impose his conditions there. They are not admissible against his objection. He says if you will admit 1918 he will consent to 1916 and 1917.

Mr. O'Brien: I do not join in offering these, 24195 your Honor.

The Master: I have not heard you join in anything except objections.

Mr. O'Brien: I am doing my duty as I see it your Honor.

Mr. Clark: Well, I offer these as an admission against interest.

The Master: I know, but I don't believe you see it always as you ought. I don't think counsel should object to things just for the sake of objecting. I think there are times in the trial of

cases when counsel can take a chance in admitting something, co-operating with other counsel.

Mr. Clark: I offer this as an admission against interest.

Mr. O'Brien: I stand by what I said. I state at this time that I am not joining in the offering of this report.

The Master: I won't take it, Major Clark, if anybody objects, either Judge Ransom or one of your associate counsel. If Judge Ransom is willing to have it in and your associate counsel

24197 is not, I will not take it.

Mr. Clark: I ask to have it marked for identification.

The Master: You don't have to have it marked for identification. They are identified.

Q. In making your 1917 report, can you state what this report shows to have been the cost of making coal and water gas at Astoria?

The Master: Read it to Mr. Woods and ask him if that report does not show, and save time.

Mr. Ransom: What report?

Mr. Clark: 1917.

Mr. Ransom: I object to it.

24198 Mr. Clark: This report shows that it costs 18.50 cents to make—

Mr. Ransom: Don't state what the report shows. I am willing—

Mr. Chambers (interrupting): The Court said read it.

The Master: I assumed then that Judge Ransom had no objection.

Mr. Ransom: I am willing to have it done if those figures in their proper setting can go in.

The Master: You can't put this report in if Mr. O'Brien objects to it. Is there anything else?

Mr. Clark: No.

Mr. Ransom: I offer in evidence the pages of the report concerning which the defendants have interrogated the witness, the 1918 report.

The Master: I won't take it.

Mr. Ransom: Exception. I call your Honor's attention to the fact that certain of these items have been brought to the witness's attention and put on the record, partially read. We are entitled to have the whole setting.

The Master: No, I won't allow it.

Mr. Ransom: Exception. I offer in evidence 24200
the certificate of the Department of Health of the City of New York, Bureau of Records, certificate of death of Edmund C. Preiss, date of death, April 10, 1917.

The Master: Who is Edmund C. Preiss? What does that mean to me? How is he identified with anybody that has anything to do with this case?

Mr. Ransom: I am now about to read or offer to read the testimony of Mr. Preiss, the witness in the prior suit.

The Master: Unless counsel for defendants admit that the Preiss in that record is the Preiss 24201
who is dead, I won't take it. I can't guess it is the same Preiss.

Mr. Ransom: I will connect it.

The Master: You will have to connect it first.

Mr. O'Brien: Did he die in New York?

Mr. Ransom: He did. This Edmund Preiss --

The Master: Unless Mr. O'Brien will concede something, I won't take it.

Mr. O'Brien: I do not propose to set up any technical barriers around it. Judge Ransom has information upon which he can state as a

member of the bar that this is the same Preiss who testified he knows he was a well-known real estate man. I am not going to interpose any objection at this time. If there is any doubt arises during the progress of the trial I will ask your Honor to strike out the testimony.

Mr. Ransom: I will consent to it.

The Master: What do you want to read, a lot of testimony?

Mr. Ransom: Yes.

The Master: Have you called it to the attention of the other side? Let the stenographer mark the death certificate.

24203

Certificate marked Complainant's Exhibit 388.

The Master: What is this, expert testimony of values?

Mr. Ransom: Yes.

Mr. O'Brien: Judge, I do not relish this being in the atmosphere of the morgue, and I do not, for the purpose of jest, refer to it, but at the time of passing on it I feel it my duty to call it to your attention that the man committed suicide, if that had anything—have you any reason to believe that the man was demented or was *non compos mentis?*

24204

Mr. Ransom: I have not.

The Master: When did he die?

Mr. Ransom: April 10, 1917. He was then a very old man.

The Master: 1917?

Mr. Ransom: Yes.

The Master: Now, I won't assume that the man was crazy, if he was crazy when he died, eleven years before in August, 1906. What bothers me is this: I do not want to spend an hour or two or a day, practically, listening to

this testimony. Can't counsel read this testimony between now and tomorrow, and say whether they will want to have it read question and answer, or whether they will let it go in subject to a general objection..

Mr. Chambers: If you give it to us now and we have a conference on it this afternoon—

The Master: Go ahead and read it.

Mr. Ransom (reading): I am reading now from the original record on file in the office of the Clerk of this Court, to which is annexed the stipulation, etc., which has been hitherto placed 24206
on the record, pages 1290 to and including 1347 of the record as in the Circuit Court:

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"Edmund C. Preiss, called as a witness on behalf of the complainant, being duly sworn, testified as follows:

"Direct-examination by Mr. Mathewson:

"Q. Where do you reside?"

Mr. Chambers: Now, I object to the reading of this testimony given upon the trial of the ac- 24207
tion of the Consolidated Gas Company vs. Willcox, and others, upon the grounds, first, that the action was not between the same parties as here, nor their privies; secondly, that the rule that the testimony of a deceased person may be read when given upon a former trial between the same parties does not apply to the reading of opinion testimony or expert testimony which may be supplied at the present time, and which is not lost because of the death of the person who gave the testimony; third, that it is irrelevant, incompetent and immaterial, being too remote.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. O'Brien: Your Honor, I desire to object to the reading of the testimony on the grounds stated by the Attorney General, and on the further grounds that the accepting of this testimony would be on the theory that this case is a retrial of the old case, and yet Judge Mayer has held that as to this action the City of New York has no legal right or no legal interest in this case; on the ground that Judge Lacombe, who
24209 figured in the former case, is counsel in this case and has been paid fees in connection with his work in this case, as appears from the evidence in the case.

The Master: I did not hear any such evidence.

Mr. O'Brien: And that he was the Court who sat in the other case.

The Master: I did not hear any evidence in this case that Judge Lacombe—

Mr. Chambers: Oh, yes, you brought in their book that they paid him a fee, a thousand dollar fee, and I brought it out and somebody objected to it, and it appears, it is in the books which you
24210 admitted in evidence, that Judge Lacombe is counsel in this case, and he appears on some of the papers as counsel.

The Master: I did not remember it.

Mr. O'Brien: On the further ground if this case is a continuation of the other case, the City of New York should be a party, and not having been made a party and having been kept out of this case by the ruling of the District Court, which held that the City hadn't any legal right or legal interest in the case, the case must be considered a different trial and a new action and,

therefore, this testimony cannot be read in here on the theory that a witness of a dead person in a former trial of an action may be read here. I emphasize also the objection to the testimony that it is opinion testimony and that may not be embalmed to be used in all future actions between some of the parties to the original action.

Mr. Chambers: May I ask if counsel challenges the fact that Judge Lacombe is counsel in this case and was the judge in the other case?

Mr. Ransom: Judge Lacombe did not sit with respect to the determination of this case in the 24212
prior suit.

Mr. Chambers: He appointed the master.

Mr. Ransom: Some of the preliminary applications were before Judge Lacombe in the former suit.

The Master: That is enough. The Master repeats the ruling made when the testimony of Mayer and Simpson was offered, that in his opinion this action is between the same parties, which are the gas company and the State of New York, the officers brought into the action simply being the means of bringing in the State of New York to litigate and test the constitutionality of this act. 24213
Objection overruled.

Mr. Ransom: May I also call attention to the notice given by Mr. O'Brien yesterday as to his desire to offer the testimony of certain deceased expert witnesses?

Mr. O'Brien: That has nothing to do with this.

The Master: That has nothing to do with this.

Mr. O'Brien: Of course, if the higher courts rule that a certain class of testimony is admissible

in behalf of the complainant, it would be—the same testimony would be admissible in behalf of the defendant.

The Master: Mr. O'Brien is justified, I think, in offering proof in line with my ruling, so long as I make the law in this case, if it is not reversed, and so long as I make the law in this case, Mr. O'Brien is justified in assuming it is the law in the case. But that won't cure my error if it is an error.

Mr. O'Brien: It will all be contingent on the
24215 subsequent rulings on the subject.

The Master: Proceed.

Mr. Ransom (reading):

"A. In the City of New York.

"Q. What is your age?"

Mr. Chambers: We consider the objections we have made will go to every question?

The Master: Yes.

Mr. Chambers: And every question?

Mr. O'Brien: On general and special grounds as made?

The Master: Yes, on every ground that is stated.

24216 Mr. Ransom: That is every ground that has been stated?

The Master: Yes.

Mr. O'Brien: On every ground that may be stated?

The Master: No.

Mr. O'Brien: Then your Honor desires us to make special objections?

The Master: If there is a special reason for it.

Mr. Chambers: Then we will have to object to the questions as they come up, to their special materiality or irrelevancy?

The Master: Certainly.

Mr. Ransom (reading):

"A. My age is 65 years.

"Q. What is your business?

"A. My business is real estate, in different branches.

"Q. What branches?

"A. Buying and selling, exchanging, appraising, procuring loans, testifying in courts and before referees in regard to the values and conditions of values all over the city, for thirty-seven years—or rather for thirty-nine years.

"Q. Have you been in the real estate business in the 24218
City of New York during this entire thirty-nine years? That is since 1867?

"A. Yes.

"Q. Have you ever been called upon to give your opinion in judicial proceedings, as to the value of property in the Island of Manhattan?

"A. About four or five hundred times.

"Q. Will you state some of the clients for whom you have acted in appraising real estate, or purchasing or selling?

"A. I have been and still am employed by the elevated railroad companies and have testified for them in about four hundred and sixty cases on the differ- 24219
ent lines, and especially on the easterly lines, Third Avenue, Second Avenue, First Avenue, 23rd Street, 34th Street and 42nd Street. I have been employed very extensively by the New York Central & Hudson River Railroad in appraising all their holdings on Manhattan Island—I have the papers here—for the purpose of testing the tax assessments; went over that twice. All of their property on the westerly side. I have here the map.

"Q. We do not care for the map, just give the names?

"A. Then I have been testifying in insurance proceedings for the New York Life Insurance Company; I have been testifying and also appraising property for the Ayer Estate in Boston. I have been appraising and testifying for the New York Edison Company, their holdings in the city; in condemnation proceedings of the Bellevue Hospital site, and extension; condemnation proceedings for the Chanler Estate, 14th to 15th Street, between 10th Avenue and the river. I have been appraising for John Pierpont Morgan; I have been appraising for different mem-
24221 bers of the Jay Gould family, in a variety of instances.

"Q. And for the Gould Estate?

"A. Yes.

"Q. Well, that is enough to begin with. Have your actions in appraisals, sales and purchases been confined to any one part of the Island of Manhattan since 1867, or have they covered various parts?

"A. Yes, they have been spread out all over the city as occasion demanded.

"Q. Do you know the values of real estate?

"A. I guess I do.

"Q. On the Island of Manhattan?

24222 "A. Yes.

"Q. I will ask you to refer to Exhibit No. 48, first the parcel at the southwest corner of 116th Street and Lexington Avenue, being Block 1,643, Lots 56, 57 and 58. Have you appraised that property?"

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial, the witness not having shown any qualifications as a real estate expert, the examination into his qualifications is very meagre here and does not indicate a knowledge of values that would qualify him to testify in this case.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Mr. Chambers: I object to it on the ground that it is irrelevant, incompetent, immaterial, not proof shown that this particular piece of property is used and useful in the gas business.

The Master: That objection is overruled.

Mr. Chambers: Exception.

The Master: Now, with respect to all future questions which raise that objection, I will assume that that objection covers them all, so it does not have to be repeated again as to each 24224 parcel or each lot.

Mr. Chambers: Exception.

Mr. Ransom (reading):

"A. Yes.

"Q. What is the value of that parcel?

"A. $89,200.

"Q. Will you next look at the parcel at the northwest corner of Third Avenue and 114th Street, on the same page of Exhibit No. 48, being Block No. 1642, Lots 32 and 33—is that?

"A. Yes, that is right.

"Q. State whether you examined and appraised that property and what its value is?

"A. I have examined it thoroughly, and put the 24225 value at $98,150.

"Q. Does that include the office, the building used by the company as an office on the premises?

"A. That building and the building in the rear, that whole concern, lots and buildings.

"Q. Did you estimate the value exclusive of the buildings?

"A. I did.

"Q. What is that?

"A. I put the value of the buildings at $25,000.

"Q. That would make the property exclusive of the buildings what?

"A. Exclusive of the buildings, $73,150."

The Master: Let me ask you this, Judge Ransom: How am I interested in what the value of the property was in 1906? How does that help me any?

Mr. Ransom: It has a bearing in this way: The defendants throughout this case have raised the claim that the earnings of this company from 1906, to the present time have been disproportionate.

24227

The Master: You have answered it. Go ahead.

Mr. Ransom: We have to show something of what the value was.

Mr. O'Brien: Later on the plumber will be brought in here, your Honor, to wipe the joint.

Mr. Ransom (reading):

"Q. Will you next take the parcel at the southeast corner of Irving Place and 15th Street, on the same page of the exhibit, being Block No. 870, Lots Nos. 54, 55, 59 and 60, and state whether you have appraised that property and what its value is with the

24228 buildings and without.

"A. I appraised the total value of this property at $306,550; land alone, $251,555, and the buildings, at $55,000.

"Q. Now, will you take the plot on the same page of Exhibit 48, the northeast corner of Hester and Elizabeth Streets. State whether you have appraised that and what the value is with and without the buildings, being Block No. 239, Lots 1 to 5.

"A. I value the ground at $158,400; buildings $24,000.

"Q. What is the total value?

"A. $182,400.

"Q. Will you look at the plot on the south side of 15th Street, west of Avenue B, being Block No. 972, Lot 45, appearing on the second page of Exhibit 48. State whether you have appraised that and what the value is.

"A. $22,347.

"Q. Please take now page 2 of Exhibit No. 48, and refer to the property between 17th and 18th Streets, fronting 350 feet on each street, west of Avenue C, being Block No. 985, Lots 7, 19, 20, 39 and 40. 24230

"A. The land value, $261,800.

"Q. Next, look at the plot on the same page between 15th and 16th Streets, fronting on the westerly side of Avenue C, being Block No. 982, Lot 13.

"A. I appraise that at $430,760.

"Q. Take next the plot between 15th and 16th Streets, 235 feet on each street, fronting on the easterly side of Avenue C, being Block No. 989, Lot 1, and say whether you have appraised that and what the value of that plot is.

"A. That I have appraised at $182,820.

"Q. Will you take now the plot at the easterly end of the same block fronting on Avenue D, 191 feet on both 15th and 16th Streets, being Block 989, Lot 26. 24231

"A. That I value at $136,048.

"Q. Take the next, if you please, the plot on the easterly side of Avenue D, between 15th and 16th Streets, running to Tompkins Street, being Block 991, Lot 26.

"A. Lot No. 26, $157,690.

"Q. The entire block between Avenue D, 15th and 16th Streets, and Tompkins Street, bears one lot number, which is 26?

"A. The block, 14th and 15th between Avenues C and D?

"Q. No, this one (indicating)?

"A. That is the block I have been talking about.

"Q. I ask you whether that is Lot No. 26?

"A. To the best of my knowledge and belief it is. It seems to me that that is one and the same number; or else I may be in error as regards the lot number. It might possibly be not the lot number.

"Q. But your value of $157,690 applies to the entire square bounded by those four streets?

"A. Yes, that is correct.

"Q. Now, take the plot bounded by Avenue D, 14th, 15th and Tompkins Streets, which I have here indi-
24233 cated as Block No. 991, Lots 1 to 47, inclusive, or Lots 1 and 47, I do not know which. What is the value of that entire plot bounded by those four streets?

"A. $233,481.

"Q. Now, I direct your attention to the property at West 18th Street, before the recent condemnation proceedings by the city, and I ask you whether you have appraised the property bounded by 16th and 17th Streets, 10th Avenue and 11th Avenue, being Block No. 688, Lot 21.

"A. I beg to be excused in the value of the Block 989, No. 26, on the northwest corner of Avenue D
24234 and 15th Street. The value of that property is $136,048.

"Q. Which is that?

"A. Block No. 989, Lot 26. There are two Lots 26 there.

"Q. And two blocks No. 991?

"A. Yes.

"Q. Now, will you look at the plot on page 2 of Exhibit No. 48, bounded by 14th Street, 15th Street, Avenue C and Avenue D, being Block No. 988, Lot No. 1; say whether you have appraised that and what the value is?

"A. I have appraised that at $574,200.

"Q. I now direct your attention to the property west of 16th to 18th Street, as it existed before a portion of the property was taken by the city. Look first at the plot bounded by 10th Avenue, 11th Avenue, 16th and 17th Streets, being Block No. 688, Lot 21.

"A. I value that at $838,200, that block as it existed.

"Q. Will you take the next block above that, which was bounded by 10th and 11th Avenues and 17th and 18th Streets, as it existed, being Block No. 689, Lot 17.

24236

"A. That is the same value; $838,200.

"Q. Now, take that portion of the block north of that, which was owned by the complainant, that is between 18th and 19th Streets, fronting on the westerly side of 10th Avenue, and 525 feet on 18th Street, and the same distance on 19th Street, less five city lots which were taken out, being Block No. 690, Lots 12, 40, 42, 43, 44, 45, 48, 49, 50, 51, 52 and 53.

"A. The value of that property is $452,100.

"Q. How many lots are out on the north side of that plot?

"A. On the north side there are out five lots.

"Q. So that the property which you have valued excludes those five lots from your estimate? 24237

"A. Yes.

"Q. Take next the plot facing on 11th Avenue, being 350 feet on 19th Street and 20th Street, being Block No. 691.

"A. I value that at $356,400.

"Q. Take next, if you please, the small parcel bounded by 11th Avenue, 13th Avenue, 16th and 17th Streets, being that small triangular piece.

"A. That is the same state of affairs, that is two plots. The same block number and the same lot number.

"Q. The same block number but not the same lot number; I have Lot 3 and Lot 12.

"A. Lot 3 and Lot 12. This lot here, 666, Lot 3 (indicating on Exhibit 48). I have got that. That is $67,991.

"Q. Now, take the plot just above that, bounded by 17th and 18th Streets, 13th Avenue and 11th Avenue, being Block No. 666; I have it marked at Lot 12.

"A. That may be correct.

"Q. At all events, it is the same plot?

24239 "A. Yes, $224,122.

"Q. Take, if you please, the plot on the north side of 18th Street on Exhibit 48, third page, being 75 feet front on 18th Street and beginning 275 feet east of 10th Avenue, Block No. 716, Lot 14.

"A. I value this property at $43,875.

"Q. Does that include the buildings?

"A. Yes.

"Q. How much exclusive of the buildings?

"A. The buildings I value at $4,500. That would give the land value $39,375.

"Q. Take next the plot on the south of that, on the south side of West 18th Street, fronting 225 feet

24240 on West 18th Street, being Block 715, Lots 51 to 59?

"A. I value this property at $121,750.

"Q. Turn now to page 4 of Exhibit 48 and state whether you have appraised the parcel on the south side of 20th Street, 175 feet front, being Block 951, Lot No. 35?

"A. I did.

"Q. What value do you fix for that?

"A. $85,820.

"Q. Does that include the buildings?

"A. Yes.

"Q. How much without the buildings?

"A. I value the buildings at $20,000, that would leave for the land value $65,820.

"Q. Have you appraised the plot shown on the same page; that is, between 20th and 21st Streets, west of Avenue A, being Block 952, Lots 7, 29, 30, 33, 34 and 35?

"A. Yes, I have appraised that property at $438,530.

"Q. Does that include buildings?

"A. I think it does. There are tenement houses there; that includes buildings, $7,500, so that the 24242
land value would be $431,030.

"Q. Those buildings are tenement houses, are they?

"A. Yes.

"Q. Did you include in your appraisal any buildings used for making gas or any structures of that kind?

"A. No, sir, only office buildings and tenement houses; that means the main office building on 14th Street and the one on Irving Place; those little houses that are sometimes in the middle of the block where gas is manufactured, with desk room, or something else for the superintendent, they are not included.

"Q. Look at the next block north, between 21st 24243
and 22nd Streets, First Avenue and Avenue A, being Block 953, Lot No. 1; state whether you have appraised that and what you value it at?

"A. I value that property at $619,136.

"Q. State next whether you have appraised the property bounded by Avenue A and the marginal Street, 21st and 22nd Streets, being Block No. 979, Lot No. 1?

"A. That block I value at $570,080.

"Q. Have you also appraised the block south

bounded by 20th and 21st Streets, Avenue A and Avenue B?

"A. Yes.

"Q. That is Block No. 978, Lots Nos. 1, 2, 3, 5 and 6?

"A. Yes, $539,474.

"Q. That includes buildings?

"A. That includes buildings, yes.

"Q. Are they tenements also?

"A. Yes, they are tenement houses.

"Q. State how much your valuation is excluding

24245 those buildings?

"A. Excluding the buildings, the land value is $518,474, and the buildings are $21,000.

"Q. In making this appraisal of this particular plot, have you excluded this lot facing on Avenue A?

"A. Yes.

"Q. 23 feet front?

"A. Yes, sir.

"Q. Have you also appraised the plot bounded by Avenue B, the marginal street, 20th and 21st Streets, being Block 987, Lots 37, 41, 42, 43 and 51?

"A. Yes, sir.

"Q. And at what do you appraise that?

24246 "A. $114,400.

"Q. Take now page 5, Exhibit 48, and say whether you have appraised the plot on the north side of 42nd Street, facing 150 feet on that street, being Block 1090, Lot 23, and what your value is for that?

"A. The value of that property is $72,600?

"Q. Take next the plot on the north side of 42nd Street, facing 100 feet on that street, beginning 225 feet east of 11th Avenue, being Block 1071, Lots 10 to 13?

"A. $57,200.

"Q. Will you next look at the plot on the north side of 41st Street, fronting 200 feet, beginning 100 feet east of Eleventh Avenue, being Block 1070, Lot 5?

"A. $83,600.

"Q. Will you take next the plot bounded by 42nd Street, Eleventh Avenue, 41st Street, being Block 1089, Lot 1, and say what the value of that plot is?

"A. The value of that plot is $957,600.

"Q. Have you included in that the value of any bulkhead rights?

"A. No, sir. 24248

"Q. Nor any land under water or outside the bulkhead line?

"A. No, sir.

"Q. That is for the upland, then?

"A. That is for upland from Eleventh Avenue west to the bulkhead line.

"By Mr. Page:

"Q. How many feet is that?

"A. That would be 1,050 feet. Eight hundred feet on the easterly side and 250, that makes 1,050.

"By Mr. Mathewson:

"Q. I see on the north side, that is on 42nd Street, it appears by my map to be 1,051 feet 4 inches, or 24249 a slight variation?

"A. That is just one of those things I could not take into consideration. It will probably be correct as it is here, 1,505 feet. It might be an inch more or a half an inch more.

"Q. It would not make any difference in your estimate, I assume?

"A. No, sir. It wouldn't make any difference at all in a plot like that.

"Q. Will you turn next to page 6 of Exhibit 48 and say whether you have appraised the property between

44th and 45th Streets, Eleventh Avenue and the bulkhead line, being Block 1092, Lots 1, 28, 38, 38 1/2 and 39?

"A. Yes, sir.

"Q. What is the value of that?

"A. The value of that property is $647,150.

"Q. Does that include any buildings?

"A. I think it does. Yes, that includes buildings to the extent of $7,500, so that the land value would be $639,650 without buildings. The value of the building—there is one house there, it is $7,500, so that the land value would be $639,650 and the total
24251 value is $647,150.

"Q. Now, in this appraisal have you taken into consideration the value of the bulkhead rights at all?

"A. No, sir, I have not.

"Q. Nor any land at all outside the bulkhead?

"A. Neither.

"Q. You have included the land up to the bulkhead line, have you?

"A. Yes, sir.

"Q. That would make 950 feet on 44th Street?

"A. Yes, sir.

"Q. And a little shorter distance on 45th Street?

"A. Make 750 feet on 45th Street.

24252 "Q. No, no. This is Block 1093, Lot 1. On 44th Street, what distance is it?

"A. Oh, 950 feet, and on the other it makes 925 feet. There is one lot less.

"Q. That is on 45th Street?

"A. On 45th Street.

"Q. Take the block or plot, the north, between 45th and 46th Streets, facing 750 feet on 46th Street and 825 feet on 45th Street, running from the bulkhead line easterly on 45th and 46th Streets, and state what value that plot represents?

"A. I value that plot at $546,000.

"Q. Let me ask you whether in that you include any bulkhead rights?

"A. No, sir.

"Q. Or any land under water outside the bulkhead line?

"A. No, sir.

"Q. Please look now at page 7 of Exhibit 48. Take first the plot between 62nd and 63rd Streets, being 481 feet 6 3/4 inches on 62nd Street, being Block 1457, Lot 6.

"A. That value is $185,240. Block 1455, Lot 13, I have appraised at $222,750. 24254

"Q. That is the property between 60th and 61st Streets, fronting on the westerly side of Avenue A?

"A. Yes, sir.

"Q. Will you take next the small parcel at the northeast corner of 60th Street and Avenue A, being Block 1474, Lot 24, and will you state whether you have appraised that and what its value is?

"A. I have appraised that at $23,535.

"Q. Please turn now to page 8 of Exhibit 48. Will you say whether you have appraised the parcel between 65th and 66th Streets, West End Avenue and the Hudson River Railroad Company, being Block 1177 and Lot 21? 25255

"A. Yes, sir. The value of that property is $194,062.

"Q. Have you also appraised the block bounded by 65th and 66th Streets, West End Avenue and Amsterdam Avenue, being Block 1157, Lot 1, shown on the same page?

"A. Yes, sir.

"Q. And what is its value?

"A. Its value is $701,680.

"Q. Have you also appraised the plot on the south side of 65th Street, 100 feet square, beginning 300

feet west of Amsterdam Avenue, being Block 1156, Lots 45 and 46?

"A. Yes, sir. Its value is $40,100. That includes building.

"Q. How much for buildings and what is the net value of the land?

"A. The value of the building is $7,000. The value which I have given you, $40,100, is the value of the land only; the value of the building is $7,000, making a total of $47,100. I am wrong, the value including the buildings, is $40,100 and the building alone is
24257 $6,500, so that would give for the total value $40,100 less $6,500 for the buildings, and make $33,600 for the land.

"Q. For the value of the land alone?

"A. Yes.

"Q. Now, turn please, to page 9 of Exhibit 8 and say whether you have appraised the block bounded by 98th and 99th Streets, First Avenue and Second Avenue, being Block 1670, Lot 1.

"A. Yes, sir.

"Q. What is its value?

"A. Its value is $667,184.

"Q. Take next the block bounded by First Avenue,
24258 the marginal street, 98th and 99th Streets, being Block 1692, Lot 1; have you appraised that and if so what is its value?

"A. $262,697.

"Q. Now, take page 10 of Exhibit 48 and say whether you have examined the property shown at the northwest corner of 111th Street and First Avenue, fronting 225 feet on 111th Street and 50 feet on 112th Street, being Block 1683, Lots 18, 34 and 35?

"A. Yes. The value of that property is $118,800.

"Q. Have you appraised the plot between 110th and 111th Streets, facing on the west side of First

Avenue, being Block 1682, Lots 8 and 11, 475 feet on both streets?

"A. Yes, sir. Its value is $436,700.

"Q. Have you also appraised the block bounded by First Avenue and Pleasant Avenue, 110th and 111th Streets, being Block 1704, Lot 1?

"A. Yes, sir.

"Q. What is the value of that?

"A. $556,827.

"Q. Please turn now to the next page of Exhibit 48, being the plot between 132nd and 133rd Streets, fronting on the easterly side of 12th Avenue, being 24260
675 feet on 132nd Street and 650 feet on 133rd Street, Block 1999, Lot 1; have you appraised that?

"A. Yes, sir.

"Q. What is its value?

"A. Its value is $447,700.

"Q. Please turn now to the following page and say whether you have appraised the irregular plot facing 92 feet 8 inches on the westerly side of Sherman Avenue and a considerable distance on Kingsbridge Road, being Block 2175, Lots 15, 18, 22 and 100, as shown on this map?

"A. Yes, sir.

"Q. What value do you place on that? 24261

"A. Its value is $103,162.

"Q. You did not appraise the Shadyside property of the company in New Jersey?

"A. No, sir.

"Q. And have you in your appraisals included any bulkhead rights or any land under water inside the bulkhead lines at all?

"A. None whatever, but I have in all cases where the land was fronting a bulkhead opposite, added an allowance to the front of that particular avenue; in other words, where the land and block fronts a water

right privilege, that means on the opposite side I have made on the deduction an allowance of 5 per cent.

"Q. On the value of the land?

"A. On the value of the land. That means the value of the land immediately fronting, not the whole block of 1,000 feet, but the land which is fronting, which would be fair, for instance 200 by 100. I see the other experts put value for conjunction on the value of the bulkhead, and I put it on the value of the land and deduct it afterwards from the bulkhead,
24263 making no allowance there.

"Q. You have not included in your figures any buildings used for gas making purposes or any holders or anything of that sort, have you?

"A. No, sir.

"Q. Only the office buildings and tenements as you have testified?

"A. Yes, sir.

"Q. Will you state what the total is of the valuations to which you have testified, if you have computed it?

"A. Well, I have made the total here, but I just discovered during the examination that I have left
25264 out two items under block on 14th and 15th Streets, which I would have to add, and I will give you that tomorrow. I have the total figure here, but it is incomplete; it lacks two items which I have not accounted for.

"Q. Will you totalize it from your figures and give it to me?

"A. Yes, sir."

The Master: Now, Mr. Vilas, you intend to read the cross-examination?

Mr. Vilas: Yes.

The Master: I shall take the cross-examination without reading it, question and answer, and any questions there may be on re-direct. In other word, I will take the balance of the testimony, to be put in the record at this point without having it read question and answer. If there is any motion to strike out any part of the testimony not read question and answer up to this point, I will entertain it before the complainant rests.

Mr. Vilas: That includes also the re-direct on page 1346, down to the end of page 1347?

The Master: Yes. 24266

(The testimony is as follows):

"CROSS-EXAMINATION BY MR. PAGE:

"Q. Where is your office?

"A. 41 Liberty Street.

"Q. What is the name of the firm, if any?

"A. Edmund C. Preiss.

"Q. There is no firm?

"A. I am the only one. I have always been alone. I have no partner.

"Q. I understand you to say that you have appraised real estate for purposes of testimony five hundred times? 24267

"A. Yes, sir.

"Q. And four hundred and sixty of those were in elevated railroad cases?

"A. Well, I am permitted to tell you, I have appraised and testified on Fourth Avenue for the New York Central and Harlem Railroad Company and the elevated. I put them all together as a rough guess, perhaps it is not five hundred and not five hundred and fifty; it would be between that, between five hundred and six hundred anyway, five hundred and fifty at least.

"Q. And in these cases you have been retained by the elevated railroad?

"A. Yes, sir.

"Q. And the New York Central?

"A. Yes, sir.

"Q. Have you ever testified for the Consolidated Gas Company before?

"A. No, sir.

"Q. You have usually testified on the side of the owner of property for the purpose of getting as large a value as possible?

24269 "A. No, I have testified even in cases where that not only was not wanted but even not indicated to be. I take the values as they are, independent of what purpose it is, it makes no difference to me.

"Q. We will take this property on 116th Street and Lexington Avenue, which is Block 1643, Lots 56, 57 and 58?

"A. Yes, sir.

"Q. Those are vacant lots aren't they?

"A. Yes, sir.

"Q. Will you state how you arrived at your value of $89,200 for that property?

"A. Yes, sir. I took the value of an inside lot on

24270 116th Street, 25 by 100 feet to be $21,000. I added 60 per cent to that for the corner, making the corner $33,600. I allowed for the lot next the corner $1,000 more than for the others, making $22,000, and I calculated the ten extra feet on the basis of $21,000 at $8,400. I added to that a plottage of 5 per cent. That gives $98,150.

"Mr. Mathewson: $89,200 I have it.

"The Witness: Well, that is wrong, it is $98,150—no, that is right, $89,200—that is right.

"Q. Where do you get your ten extra feet to add?

"A. Well, I get the ten extra feet because this property is 80 feet.

"Q. Well, three lots would be 75 feet, and that would only leave 5 extra feet? 24271

"A. That would be five extra feet. It would be $4,200, and that figure is not correct. I will have to change that. The five extra feet instead of ten extra feet is $4,200, and that would give $85,000 for the whole value instead of $89,200.

"Q. Then you wish to correct your valuation on the plot?

"A. Yes, I do, it is a clerical error here, instead of ten feet, five feet.

"Q. Take the next property. Block 1642, Lots 32 and 33? 24272

"A. I have taken the value of an inside lot on Third Avenue at that point to be $25,000. I have added 50 per cent to that for the value of a corner lot, which gives me the value of a corner lot to be $37,500. I have valued a lot on 114th Street at $14,000 and allowed $1,000 more for the lot right adjoining the corner. That would give me $66,500. I have added to that 10 per cent plottage. That would make $73,150. I added the value of buildings $25,000, arriving at $98,150.

"Q. The lot which you say adjoins the corner is 100 feet distant from the avenue, is it not? 24273

"A. Yes, sir, but it is considered worth $1,000 more; every lot adjoining the corner for special purposes, the tendency being to have extra large and extra deep plots today, anyway.

"Q. Would you add that same value whether the lot adjoined directly the corner lot and was only 25 feet from the corner?

"A. Yes.

"Q. Or whether it was 100 feet, it would make no difference in your estimate?

"A. No, sir, not on a live avenue like that.

"Q. How do you arrive at your lot value on Third Avenue?

"A. I know the values of Third Avenue since 1869, and 1868 and 1867 up to date. I have since that time kept my separate records where I have made an extract from the Real Estate Record and Guide every year. I have tabulated all these sales and I have testified in so many cases on Third Avenue that I am perfectly familiar with their values.

"Q. And you do not have to look up now to find what is the value you are so familiar with it?

24275 "A. Hardly. In the majority of cases I will tell you right off. This is part 5 (indicating book), you see. Here always I can give you the sales from First, Second and Third Avenues, wherever it is, from 1870 or 1869 up to the present hour year by year written by my own hand with the configuration, what it is, and I have my lot books, where I have tabulated it besides. So I can read off almost everywhere the whole abstract of the title you give me from my own books, and I have done that from 38 to 39 years before a title company existed, or information bureaus.

"Q. And you have taken the values of the properties at the considerations expressed in the deeds?

24276 "A. Not always. For when you sell property for 39 years, you make a distinction between fake sales and genuine sales, forced auction sales and executor's and trustee's sales. I know the difference quite well, when I read it.

"Q. Have you sold property in this neighborhood?

"A. I have, yes, sir.

"Q. When?

"A. Long ago. I find many years I can give you what I sold there (referring to paper) corner of 70th Street. Northwest corner of 69th Street. Northwest corner 72nd Street.

"Q. Well, that is two or three miles from here?

"A. Well, I will come nearer to it. I was just going up there. I am afraid I left that list at home or at the office, but I can bring it to you tomorrow. I ought to have it here because I was looking particularly for it. It is not here, but I have around 114th Street, there are only one or two sales in the immediate vicinity that I remember. I have sales from 23rd Street to the river. From the Harlem River to the Bridge. But in the immediate vicinity of 114th Street I think I sold some property in 112th Street, but I cannot remember it just now. I cannot tell you 24278
from memory, but I have that list.

"Q. You did not look up those sales for the purpose of preparing yourself to testify?

"A. No, because they are so remote, I have not been selling any property on Third Avenue for a long time.

"Q. How many years since you sold property on Third Avenue?

"A. That I cannot tell you. It may be ten years and fifteen years that I have not sold anything on Third Avenue in that section. Most of my time has been taken up with all this, and I am all alone.

"Q. Most of your time has been taken up in preparing these books that you have prepared? 24279

"A. Well, how could I prepare my cases and get through with it for fourteen years, if I didn't get posted? It is pretty hard work to be posted.

"Q. Yes, I should think it was?

"A. And it is a good deal of valuable time wasted on it, too. Now, you see, for instance, here on Third Avenue I have the sales what I brought with me from 1898 to 1905, every one of them. Now, in making up my values, in order to refresh my memory I looked over this list. I only put reliable sales in, ex-

ecutors' and trustees' sales in, and such like. I don't put in nominal considerations or trade deals, because I know they are no good for my purpose.

"Q. I understand from your testimony that for the last ten or fourteen years your business has been that of an appraiser rather than as a broker?

"A. No, well, I have been selling property whenever I had the time to do it.

"Q. Your time has been so engaged in making appraisals that you have not had much time to sell?

"A. I have not been extensively engaged in selling
24281 property for the last few years, that is true. I have not had the physical time to do it.

"Q. You have based your conclusions, as I understand it, largely upon sales by executors and trustees?

"A. Executors, trustees, or sales that I know to be perfectly straight, and where the consideration is known to me, somehow or other. I have lots of property for sale and I know what the asking prices are and what the selling prices are, and I can judge after my experience whether the considerations named are bogus or correct.

"Q. But your information is derived from the recorded instruments rather than from your actual ex-
24282 perience?

"A. Well, I don't know. I started as a very active man so many years ago and have been at it ever since. I have never lost sight of it and have kept myself posted, and whether I sell property personally or not does not increase my knowledge and would not have increased my knowledge or my ability to testify.

"Q. Well, we will take now plot 870, which is the Irving Place and 15th Street corner, and see how you arrived at the value of that property?

"A. On Irving Place I took the value of an inside lot 20 by 100 feet to be $45,000. I allowed for the lot

adjoining the corner 25 by 100, $2,000 more; that is $47,000. I allowed 50 per cent over and above the value of $45,000 for the corner, that will make the corners $72,500. I accounted for nine additional front feet at $1,800 per front foot, $16,200 on Irving Place. On the south side of 15th Street I took a lot right next to the corner to be worth $22,000, a full lot 25 by 100 feet. Now, the lot in question being only 84 feet in depth, that is, according to the Hoffman rule, 93 per cent of a full lot, $22,000, which is $20,500 for that lot. The next lot 25 by 100 feet I have taken to be worth $21,000, and 93 per cent of 24284
that the lot being only 25 by 84 feet depth, is $19,500. There was an excess of five feet there by 84 feet on 15th Street, which I valued at $3,900, which makes a total of the land value of $224,600. I have allowed a plottage on that plot of 12 per cent, that is $26,950. Adding that together, I get $251,550 land value and $55,000 for the building, or a total of $306,550.

"Q. Let us see. You value the corner lot at $72,500?

"A. Yes, sir.

"Q. You valued the lot next the corner on Irving Place at $47,000?

"A. Yes, sir. 24285

"Q. That takes care of fifty feet. What did you value the next lot at?

"A. $45,000.

"Q. And the nine adjoining feet, $16,200?

"A. Yes, sir.

"Q. Then we come on to Irving Place and you have a lot which you value at $20,500?

"A. That is for a lot 25 by 84, that is on 15th Street?

"Q. Yes, and an allowance for being next the corner?

24286 Edmund C. Preiss, Cross.

"A. And the next lot on the basis of $21,000 is $19,500, and there comes the extra five feet on 15th Street, $3,900 that is on a basis of $19,500 for a lot farther up, about the middle of the block.

"Q. Will you foot those all up again and see if your calculation is right?

"A. Yes. Yes, sir, that is right, $224,600.

"Q. But you gave in your direct-examination the value of that plot as $251,550.

"A. That is including the plottage 12 per cent.

"Q. Then you add something more?

24287 "A. Yes, sir, I added $26,950 to the $224,600.

"Q. I don't suppose you have sold any property in Irving Place or that neighborhood for some years, have you?

"A. I have been living there until the last four or five years ago, and I have sold property on 14th Street, on 13th Street, on 15th Street, on 18th Street, on 19th Street, on 20th Street, on 21st Street, on 23rd Street, on 24th Street, on 28th Street, on 30th Street and all along there.

"Q. In the immediate neighborhood of Irving Place?

"A. Yes, sir, and in the immediate neighborhood of

24288 Irving Place.

"Q. Sold any property on Irving Place?

"A. No, sir.

"Q. How recent are these sales?

"A. Well, the most recent that I could point out was on 13th Street about six years ago, and I don't think there was anything of more recent date.

"Q. Has property increased in value in that neighborhood in that time since your sales?

"A. Yes, sir.

"Q. How much has this property appreciated in the last ten years?

"A. Do you mean how much it increased in value?

"Q. Yes.

"A. That is hard to say. It depends entirely upon the location.

"Q. I am speaking of this particular property, Irving Place?

"A. This particular property, well it ought to have increased at least 15 per cent.

"Q. And I suppose in the past twenty-two years it has increased in value a good deal more?

"A. Irving Place years ago was very high and then it dropped down to almost nothing and went begging, and it required a long time for recuperation, and after 24290
it had recuperated it was again under a cloud, and it was only within the last two or three years that Irving Place showed signs of life. I know every house there and could give you the whole history of each of them.

"Q. Was it a time of depreciation or a time of appreciation in 1884, that is twenty-two years ago? Is that one of the low times or one of the high times?

"A. Well, in 1884 around there property was still low. It had not reached the values that it had once had when it was a strictly private street in 1872 to 1873. As a general rule the old values of 1872 prior to the panic were reached in that section in 1883 and 24291
1884, so going farther back you can see it was worth about as much in 1884, as in 1873, for the character of the neighborhood changed entirely, boarding houses and lodging houses had come in where it was private residences formerly, and then the nuisances brought in by Irving Hall and academies and such like was something frightful, because I used to live in 47 and I know I could sleep no nights.

"By Mr. Mathewson:

"Q. How about Tammany Hall?

"The Witness: Tammany Hall I leave out. So all these—and in recent years—

"Q. Now, we will get into a respectable neighborhood and go into Hester and Elizabeth Streets.

"A. That is fine there. Hester and Elizabeth Streets, I think it has a value of a lot $23,000, an inside lot. The value of a corner lot 50 per cent more. That would make $33,000. Then I valued the other four lots at $22,000 apiece, that makes $88,000, arriving at a total value of $144,000, to which I add plottage 10 per cent. $14,400 which gives me $158,400. The buildings I valued at $24,000 and I got a grand total of $182,400.

24293 "Q. Take that little irregular piece on the next page of the exhibit, Block 972, and give me your method of arriving at the valuation of that piece. Block No. 972, Lot 45.

"A. Now, that property is a gore and it is virtually a part of old Stuyvesant Street that ran through there from the Bowery to East River, and this diagonal line is about the easterly line of the old Stuyvesant Street. Now, I figured the value of a street lot there, 25 by 100 feet, at $12,000. There are 352 square feet on the street at $4.80, that gives me $6,384 for that strip of land, 13 feet front by the full depth. I have interior lots at 11,610 square feet, at $1.66 a
24294 square foot, that is the equivalent of one-quarter of a front foot, according to the Murray-Hoffman rule, that is $13,932. That gives me a total of $20,316, to which I add 10 per cent, $2,031, which gives me $22,347.

"Q. What do you add that 10 per cent for?

"A. That 10 per cent I added for plottage because, small as it is, it is of great value to all these people that own these short lots. You control all the lots here in the front away back here. That is what I allowed plottage for. I could not have done so otherwise.

"By Mr. Mathewson:

"Q. All the short lots facing on 15th Street, do you mean?

"A. No, there is only 13 feet on 15th Street, but it runs southeasterly and all the lots adjoining to this 13 feet have only a very limited depth in some places only a fraction, no depth to them at all, so there is an additional element of value in this gore.

"By Mr. Page:

"Q. If you were valuing the property at 15th Street you would value that at an additional price because it controlled the frontage of these rear lots, wouldn't 24296
you?

"A. No, that is not necessary.

"Q. I know it is not necessary, but would you not make such an allowance?

"A. Not on a small piece like that, on a 13-foot lot, I certainly would not add plottage.

"Q. I am not speaking of a 13 foot lot, but supposing you were valuing this property which is not included here but in the front of that portion of the gore which is the rear here?

"A. I would add plottage there.

"Q. So if you were valuing that, you would also add plottage because that controls this? 24297

"A. Yes, sir. That is always the great difficulty in straightening out lines, that both sides want more than the property is worth.

"Q. And you have made that allowance so much more than this property is worth—

"A. I did not make any allowance more than it is worth. I make the allowance what it is worth according to my judgment."

Adjourned to 10:30 A. M., August 28, 1906.

New York, Tuesday, August 28th, 1906,
10:30 A. M.

Met pursuant to adjournment.

Present: The Master, Mr. Mathewson, Mr. Meade, Mr. Page Mr. Burr.

"EDMUND C. PREISS resumed:

"Mr. Mathewson: Before you begin, Senator, I believe the witness desires to make a correction in his testimony.

"The Witness: The valuation for Block No. 24299 991, Lot 26, which appears on page 1293, ought to be $157,690, in place of $213,165.

"By Mr. Mathewson:

"Q. Was that a reappraisal or the result of a clerical error?

"A. That was a clerical error, by my looking at the different number of the blocks here.

"Q. Will you now state the total of your valuation of the property to which you have testified, which you had not totalized yesterday?

"A. Yes. It is $14,305,911.

"Q. That includes no bulkhead rights and no land under water outside bulkhead lines?

24300 "A. It does not.

"By Mr. Page:

"Q. Does that include the value of the buildings?

"A. There are no buildings there.

"By Mr. Mathewson:

"Q. The buildings to which you testified yesterday, the Senator means?

"A. Oh, yes. In this total amount the buildings I have testified to are included.

"CROSS-EXAMINATION CONTINUED BY MR. PAGE:

"Q. Will you take Block 985 on East 17th and 18th Streets, between Avenues D and C.

"A. Yes, I have given the total value of Block 985 at $261,800. That is on the basis of 28 lots 25 by 92 feet each at $8,500, making $238,000, plus 10 per cent, or $23,800, makes $261,800.

"Q. That is ten per cent for plottage?

"A. Ten per cent for plottage, yes, sir.

"Q. Now, take Block 982, Lot 13.

"A. Block 982, Lot 13, I have put that at $430,760.

24302

"Q. How did you arrive at that result?

"A. This block, being 206 feet 6, I have estimated the two corner lots as being 28 feet 3 inches by 100 feet and allowed the inside lots to remain 25 by 100 because in blocks which have an extra size over and above the 200 feet and which are all in one hand, the corner lots are generally allowed to absorb the difference between the 25 foot lot and the balance, so I made the corner lots 28 feet 3 and the inside lots 25. Now, that is on inside lots at $11,000 apiece, with an addition of 50 per cent to the corner lots, and an addition of 3 feet and 3 inches extra would make the corner lot $18,000 on 14th Street. It would make the

24303

corner lot on 15th Street $16,000. The two avenue lots adjoining both corners at $12,000 is $24,000. The four inside avenue lots at $11,000 would be $44,000. Now, I have thirteen lots on 14th Street, each 25 by 103 feet 3 inches at $12,000, that would make $156,000. I have nine extra feet at $440, that would make $3,600. Now, I have thirteen lots on 15th Street at $10,000, which would be $130,000. Then I have nine additional feet at $400, which is $3,600. That makes altogether $391,600, to which I have added a plottage of 10 per cent, which is $39,160, thus arriving at $430,760.

"Q. Take Block 987, which is the next, I believe.

"A. 989. I have given a total value of $318,868—

"Q. No, wait a minute.

"A. No, that is for Lot 1, $182,820—

"Mr. Mathewson: No, that is not right.

"Mr. Page: I think it is.

"The Witness: I have added the two items of the easterly front of Avenue C between 15th and 16th Streets with the plot on Avenue D between 15th and 16th Streets, putting the two figures together, and I am going to give it to you now.

24305 "Mr. Mathewson: There are two big plots there.

"The Witness: Well, you can have it separate. Lot No. 1, $182,820. That is on the following basis. Here again I have allowed 28 feet 3 inches x 100 feet, corner.

"The Master: Yesterday he said it was $233,481.

"The Witness: No, that is 991.

"Mr. Page: 991 he has got $182,820.

"The Master: That ought to be corrected then on the top of page 1293.

"Mr. Mathewson: Yes. State what the valua-

24306 tion of Lot No. 1 is.

"The Witness: $182,820. That is the corner of 15th Street, taking the basis of an inside lot on Avenue C, at $9,000. Now, I have added to the corner 50 per cent, and allowed the balance for the extra 3 feet 3 inches, arriving at a conclusion of $14,600 for the 15th Street corner and $14,600 for the 16th Street corner. For the two adjoining lots adjoining the corner each on one corner at $10,000, $20,000; four inside avenue lots at $9,000 is $36,000; five lots on 15th Street at $7,500, $37,500; five lots on 16th Street at the

same value, $37,500; and ten extra feet on each of the two streets at the basis of $300, $6,000. That, $166,200, with ten per cent plottage, $16,620, makes $182,820. Now, for lot 26, Block 989, I have put that down here at $157,690.

"Q. Now, are you giving—

"The Master: Is that the same as he gave before?

"The Witness: No, I put that lot down at $136,048.

"The Master: On page 1293 that ought to be corrected. That was the lot he valued yesterday 24308
at $143,678.

"Mr. Mathewson: No, that is right, at the top of page 1294.

"The Master: What is this $143,678 on page 1293? I am referring to the testimony. That is what he corrected on the top of the next page?

"Mr. Mathewson: Yes, that is right.

"The Master: Cross that out on the top of page 1293, as he corrected it on the top of page 1294.

"Mr. Mathewson: I ought to say in behalf of the witness that he had arranged his valuation according to the block numbers beginning with 24309
the lowest block number and going up numerically, which was an entirely different order from that taken by Mr. Wheelock, and at the last moment I asked him if he would not rearrange his figures, putting them in the order they appear on Exhibit 48, and he put them down hastily and these clerical errors were the result and should be placed on my shoulders rather than on the witness. I thought it would be more convenient to us to have him follow the same order.

"The Witness: Lot 26, Block 989. I have valued the northwest corner on Avenue D and 15th Street, 28 feet 3 inches by 100 feet, at $12,000; the southwest corner of 16th Street, 28 feet by 100 feet, $12,000; the two lots adjoining the avenue corners at $9,000 each, $18,000; the four inside avenue lots at $8,000 is $32,000; six street lots at $7,000 is $42,000; 16 extra feet on each street, $7,680. That is, $123,680. Plus 10 per cent, $12,368, gives $136,048.

"Q. Block 988, Lot No. 1?

24311 "A. 991 you mean.

"Q. Oh, haven't you given that?

"A. No. 991, Lot 1. I valued that whole at $233,481. Now, the analysis of that is the following: Northeast corner of Avenue D and 14th Street, 28 feet 6 inches by 100 feet, at $14,000 the southeast corner of 15th Street, the same dimensions, at $11,500; the two lots on the avenue adjoining each corner, $9,000, makes $18,000; the four inside lots at $8,000 makes $32,000; then six lots on 14th Street at $8,000 is $48,000; six lots on 15th Street, at $6,000 is $36,000. Now, there is an irregular frontage left on Tompkins Street which amounts to 12,803 square

24312 feet at $3.33 a foot, that makes $42,649. Now, I put 10 per cent on to that, $20,214; that gives me $222,363. Now, this frontage having a water front on the opposite side of Tompkins Street, I have added to the land value of the Tompkins Street front on the basis of $222,363, 5 per cent for the conjunction of the two plots.

"Mr. Mathewson: With the water front?

"The Witness: Yes, from the fact that the water front opposite belongs to that upland. That is $11,118. The total of which is $233,481.

"Q. Now, you say the avenue lots would be 100 feet?

"A. Yes.

"Q. On 15th Street?

"A. Yes.

"Q. And then you take 6 lots?

"A. I have made it this way here (indicating). I have taken 105 feet 10 inches on 14th Street here and I have taken 18 feet 6 inches here.

"Mr. Mathewson: What is 'here'?

"The Witness: On 15th Street. I have made that 12,803 square feet on Tompkins Street. I 24314
have added the lots here to make it 100 feet.

"The Master: Where?

"The Witness: On 15th Street, so that I arrive here at 12,800 square feet at $3.33, that is $42,649 for conjunction. If I lay out that property as it is in a block 206 feet on the avenue by 250 feet on each street, then I retain here 18 feet 6 inches on 15th Street.

"By the Master:

"Q. You had a square block?

"A. I had a square block 250 feet. I have divided that block to ease the computation. I have made the block here 206 feet by 250 and then on the balance 24315
of the block, as it would be 18 feet 6 inches by 214 feet 2 1/2 inches on Tompkins Street and 105 feet on 14th Street. I took the number of square feet and appraised it according to the value of the Avenue D lots, and for the purpose of establishing the value of the connection—nobody would buy this property 18 feet 6 inches by 105 feet 10 inches—I have added as much ground here from this 250 feet as necessary. From this 250 feet I took off as much ground as to make it 100 feet, so it would be 100 feet on 15th Street and 105 feet on 14th Street, and on that I have

allowed 5 per cent. Not on the whole block, only for the front.

"By Mr. Mathewson:

"Q. 5 per cent for that part on account of the property across the way?

"A. On account of the conjunction with the water front there.

"By Mr. Page:

"Q. Now, if I understand your method of arriving at that result in order to get the number of square feet you made an arbitrary—

24317 "A. I made a subdivision of the block.

"Q. Well, but you had already allowed, had you not, for that 100 feet—81 feet 6 inches on 15th Street, already, hadn't you?

"A. But not in the computation of the value for the conjunction.

"Q. No, I know, not in the value of the property for the conjunction, but you had already allowed in your valuation for the 81 feet 6 inches on 15th Street?

"A. It is 18 feet.

"Q. Well, 18 feet 6 inches and add 81 feet 6 inches and you get 100 feet. You said you had made that

24318 frontage 100 feet.

"A. Yes, I have added for the purpose of computing the value of the connection with the water front as much land west of the 18 feet 6 inches surplus on 15th Street from the size I took, 250 feet, from the square size, as would be necessary to get a depth of the southwest corner of 15th Street and Tompkins Street, 100 feet on 15th Street, so that I have made for the purpose of computing the conjunction value this way (indicating).

"Q. Yes. That was merely for the purpose of

computing conjunction value and not for the purpose of ascertaining the number of square feet?

"A. No, the number of square feet I ascertained by simply computing the dimensions as I have them. 18 feet 6 inches on 15th Street by 224 feet on Tompkins Street, by 105 feet 10 inches on 14th Street and 206 feet running north to 15th Street. That piece in itself is 12,803 square feet. That was for the purpose of establishing the land value of the whole block and for the purpose of establishing only the conjunction with the water front, I had to dissect that and add to this 12,803 square feet as many feet on 15th Street 24320
as would be necessary to make it 100 feet deep. That is what I mean.

"Q. I understand. Now, proceed with Block 991, Lot No. 26.

"A. Block No. 991, Lot 26. I have given the value today on this Lot 26 as $157,690. Now, I arrived at that in the following manner: I allowed for the northeast corner of 15th Street and Avenue D, 28 feet 6 inches by 103 feet 3 inches, $11,500; for the southeast corner of 16th Street and Avenue D, the same dimensions, $11,500; for the two lots adjoining the corner on the avenue, $9,000 each which would be $18,000; four inside avenue lots at $8,000 would be 24321
$32,000; then two lots on 15th Street, 25 feet by 103 feet 3 inches at $8,000, $16,000; five extra feet on 16th Street at $3.20 is $1,600; two lots on 16th Street at $7,000 is $14,000; five extra feet at $2.80 a foot on 16th Street is $1,400. Now, here again I come to the same rule and same method. I have made that run through to make it a rectangular block in front and computed for the balance of the block with the oblong line on Tompkins Street, the number of square feet. The number of square feet is 9,035. At a valuation of $3.50 a square foot it brings it to $31,122.

The total amount of this would be $137,122, to which I add $13,712, making it altogether $150,834, to which I have added the value of the conjunction on the basis of this being a very short block and it being almost next to impossible to omit any parcel of it to make it valuable for the water front, I have allowed 5 per cent on the whole piece, that amounts to $6,856. That is 5 per cent bulkhead connection on the value of $137,122. That is the value without the 10 per cent plottage. That is $157,690.

"Q. Now, if you will take Block 988, Lot 1, that
24323 being the entire block.

"A. Block 988, the whole block I valued it at $574,200 in the following manner. The Avenue C front between 14th and 15th Streets, the same as it is in Block 982 on the west side of Avenue C between 14th and 15th Streets, $95,000. Then the northwest corner of Avenue D and 14th Street, 28 feet 3 inches by 100, $13,500; the southwest corner of Avenue D and 15th Street, 23 feet by 100, $12,000; two adjoining lots on the avenue corners, $9,000 each, is $18,000; four inside avenue lots at $8,000 is $32,000; 19 lots on 14th Street at $10,500 is $199,500; 19 lots on 15th Street at $8,000 is $152,000; a total of $522,000, to
24324 which I have added a plottage of $52,200, 10 per cent, giving a value of $574,200.

"Q. As I understand it, the property on 14th Street which you have valued is covered by buildings, is it not, for gas manufacturing?

"A. Gas manufacturing; not included.

"Q. Your valuation of the land is what the land would be worth if those buildings were removed?

"A. The land value without any buildings on.

"Q. How much does this building on there depreciate the value of the land as it stands today?

"A. That I cannot tell you, because I do not know the value of the buildings.

"Q. I know; but if you valued these as lots, you would have to remove the buildings?

"A. Yes.

"Q. To get what they would be worth without any buildings on them?

"A. In that case you would have to give a much higher figure probably. I give you the value as it is today, provided possession of the land is given. What you do with the buildings—that is a matter that does not enter into my calculations at all.

"Q. You are valuing what the vacant plot of ground would be worth in that particular locality? 24326

"A. This block of ground would be worth in this locality, yes.

"Q. Without any buildings on?

"A. Without any buildings on.

"Q. Now, if they were to sell them, in their present condition, they would have to pay something for taking away these buildings, would they not?

"A. They might use the material. There is nobody else that would buy these buildings. That is a matter that I cannot judge about, what they would do with the buildings in that case.

"Q. I am asking, what would be the effect on the land having those buildings on there? 24327

"A. It would be worth just as much today as it is, because nobody will buy the land with the buildings on. They would buy the land for the purpose of improving, and not with the gas houses on.

"Q. Therefore, for the purposes of sale those gas houses on there are a detriment, are they not?

"A. The gas houses are a detriment, certainly.

"Q. How does the gas house being there affect the property on the other side of 14th Street?

"A. Unfavorably.

"Q. Unfavorably?

"A. Yes.

"Q. And you have given the values that you have as to the value of that land, if there was no gas house in the neighborhood?

"A. I have given the value not as if there was no gas house, but as they are, provided they are going to be removed, or portions of them. You may for instance sell a portion of the buildings and sell the avenue front, and retain the gas house in the rear and somebody who has a chemical factory or some such thing might not object to the presence of the gas house in the rear, and would buy that avenue front
24329 and put up a big building there.

"Q. If a portion of the plant was removed and that portion remained where gas was manufactured, would the value of the property that was cleared be the same as you have given here today, or would be less by reason of the proximity to the gas house?

"A. That is what it would bring, and it would bring more; it would not be worth less at all for that purpose.

"Q. You think then that the gas house adjoining the property would add to its value?

"A. I do not.

"Q. You stated that it would be worth more than what you have given here?
24330 "A. No, I say if that gas house was to be removed from the rear, if you remove the gas house and leave only the block front, say 200 by 100 or 150, and sell that; those are my figures here. If you were to sell the whole block simultaneously you would get considerably more for the land than I have valued it, because it would remove what is called a nuisance and an eye sore, so my values would be quite inadequate under that condition of affairs.

"Q. Then you have not valued, as you have just testified, the land as it would be with the buildings all removed?

"A. I have, but conditionally. For instance, if a man were to come and buy that whole plot today and the gas houses were to be removed, my figures would be altogether too low, but if a man would come along and buy only a portion, not objecting to the presence of the gas houses, or what might be left of them, then my figures are correct.

"Q. Then, as I understand it, your figures are based on a partial removal of the plant and with the gas plant in operation?

"A. To some extent, yes, sir.

"Q. And it is not the value of the land with the 24332
building entirely removed, as you have testified here a few moments ago?

"A. It is, conditionally, but not simultaneously, not the whole block.

"Q. As I understand it, your value of the land is a progressive one; as the buildings are torn down your value attaches, and when the buildings are all removed then there would be a still greater value?

"A. There would be on account of the whole neighborhood being benefited and attaining an entirely different character.

"Q. Now, we are getting at something. That is, by the removal of this gas plant, it being a nuisance, 24333
the entire neighborhood would benefit and this property would increase in value also?

"A. Yes, to some extent, yes. It might possibly bring a great deal more than I have testified.

"Q. And if they removed these buildings entirely then they would get a still greater appreciation of value than you have testified to today.

"A. Yes, if it was removed in the whole block, all buildings together at the same time, but if there are buildings remaining—

"Q. (Interrupting.) I know, but take that condition, remove this manufacturing plant entirely, how much would you add to the value of the property?

"A. That I cannot tell because I do not know when that is going to happen.

"Q. Never mind; suppose it happens today. We are supposing now; I do not know if anything is going to happen.

"Mr. Mathewson: Well, what do you mean, if they were all cleared at once?

"Mr. Page: I mean, if you wiped out your
24335 manufacturing plant and removed to Astoria, as you claim you are going to, how much would that increase the value of that land?

"A. That might in all probability go to fifteen per cent higher up above my figures, if immediately cleared out.

"Q. You think it would add fifteen per cent to the value you have given?

"A. I mean if the whole business was removed simultaneously, and the character entirely changed. I believe my figures would be too low, and I believe that you could get fifteen per cent, at least more for the property than I have valued it today on the basis
24336 of the gradual removal of the buildings, not simultaneously.

"Q. Take Block 688, Lot 21, on Exhibit 49?

"A. That is the block, 16th to 17th Streets, 10th and 11th Avenues; I value this property at $838,200. These blocks here are only 184 feet in depth, so they are not figured on the value of a 25 foot lot, but on the value of what a 23 foot lot today is. I have simply taken the lots as they have been laid out, as they have existed all the time, as if 25 foot lots never existed.

"Q. You mean on the avenue?

"A. Yes. I have taken the northwest corner of 16th Street and 10th Avenue, 23 by 100 for $19,500. The next lot to the corner at $14,000; the four next ones at $13,000 apiece, $52,000. The next one, $14,000 and the southwest corner of 17th Street, $19,500, which is the same as 16th Street. Then, I have 44 street lots. Now, those lots are 25 by 92. That gives $484,000, and 44 at $11,000, $484,000; that means that the lots run through from street to street. Then, the 11th Avenue front I have put on the same basis as the 10th Avenue front, less ten per cent. Now, the 10th Avenue front altogether 24338
was $119,000; take ten per cent off for the 11th Avenue front, is $111,000. The total amount would be $762,000 to which I add ten per cent for plottage, $76,200, arriving at the total of $838,200.

"Q. Will you turn to page 3 of the exhibit and give me the value of that plot as shown there, what is left of it after the Marginal Street has been taken off?

"Mr. Mathewson: As now left, since the improvement, you mean?

"Mr. Page: Yes, have you figured that?

"A. The total value of this after the condemnation is $382,793.

"By Mr. Mathewson: 24339

"Q. What was the original length of the block?

"A. 800 feet.

"Q. And what is it now?

"A. It is 286.20 feet on 16th Street and 357.29 feet on 17th Street.

"By Mr. Page:

"Q. That is, you would deduct for the property that has been taken $455,407?

"A. Yes.

"Mr. Mathewson: It is hardly possible to proceed on a method of deduction, because some-

times after an improvement there is less land than before, but that less land is worth more than the original plot.

"Mr. Page: I know, I suppose he has valued that, and I suppose he is giving an approximate valuation.

"Q. Now, we will take the block above, No. 689; the value of that first, as you have it on Exhibit 49, is what?

"A. The Block No. 689, on the former exhibit, is the same as Block No. 688, $838,200.

24341 "Mr. Mathewson: Arrived at in the same method?

"A. (Continuing.) Yes, the same method. The blocks are of the same dimensions.

"Q. And the property is the same value?

"A. Yes.

"Q. Now, take Block No. 689 as it is today.

"A. Block 689 with the Marginal Street there is today $457,750, making a difference of $380,450.

"Q. Now, if you will take Block No. 690.

"A. Block No. 690 is worth, in the original size—

"Q. As it is on Exhibit 49?

"A. Yes, $452,100.

24342 "Q. State how you arrive at that?

"A. I have taken the 10th Avenue front as heretofore.

"Q. Probably I might shorten that. Are the lots of the same value of this plot as in 689 and 688?

"A. No, not precisely.

"Q. Then give the way you have figured it.

"A. I have taken the 10th Avenue front at $119,000 the two adjoining lots at $11,000 each, are $22,000, and the other lots, 16 lots on 18th Street, at $10,000 each, is $160,000, and there are only eleven lots on 19th Street, because there are different lots out in

that block, $110,000. That will give a total of $411,000 to which I have added plottage of ten per cent, $41,100 arriving at a value of $452,100. That is the property in its former shape.

"Q. Now, turn to Exhibit 45.

"Mr. Mathewson: That takes just a little corner off that?

"A. With the Marginal Street out, yes; that is $465,973. That is the 10th Avenue front as above; that is on the Marginal Street, 17,429.71 square feet on the Marginal Street at $6.46 per foot, $112,592. Two lots at $11,000 would be $22,000, and 17 lots at 24344
$10,000 would be $170,000. That would be $423,592; now, with ten per cent added to that, $42,359, is $465,951.

"Q. The fact that the Marginal Street now runs along the end of this property, whereas it was an interior lot before; this improvement has increased the value rather than diminished it; is that right?

"A. Well, there is a case where it actually has, certainly.

"Q. This particular plot is worth more since that improvement has been made than it was before, isn't it?

"A. Well, computing the same number of square 24345
feet contained in the block, yes, sir.

"Q. Well, in other words, you have got another frontage?

"A. You have got another frontage; but you had a frontage; but you had a frontage before that, too.

"Q. Then it would not add anything, would it?

"A. Well, it has not added anything in one sense of the word; when you figure the total amount as a loss; that is what the award is claimed for, for the number of square feet or the number of lots that has been taken for the marginal improvement.

"By Mr. Mathewson:

"Q. Well, the value of the Marginal Street on the west end more than offsets the loss of that little gore, which the Marginal Street takes?

"A. Yes.

"Q. So it makes what is left worth more with the Marginal Street than the whole plot was worth before the Marginal Street was put through?

"A. Not in this lot No. 608. Oh, yes, it does; you are right, for the reason that you have only taken a little angle out there, and instead of this little angle
24347 that you have lost, well, about 800 or 900 square feet, instead of that you have got a whole avenue front here, and that land has actually gained; that block has gained.

"By Mr. Page:

"Q. No, Block 691?

"A. In the original size, I put that as $356,400, putting the 11th Avenue front as I have taken the 11th Avenue front in the other blocks below $111,000; then a lot 25 by 92 on 20th Street, $12,000; then nine additional lots on 20th Street, at 11th Avenue is $99,000. Then a lot 25 by 100 on 19th Street is $11,000, nine lots on 19th Street at $10,000, $90,000;
24348 the total would be $324,000, plus ten per cent for plottage, $32,400 makes $356,400.

"Q. Are you through with the plot as it was originally?

"A. With the original size of this plot, yes.

"Q. Now, take Exhibit 48, the same property as shown after the improvement has been made.

"A. After the improvement has taken place there is space left of 20,789 square feet on the Marginal Street at $6.75 per square foot; that is $139,731. There is left nineteen feet on 19th Street at a value of $400 per front foot, the basis being $10,000 for a full

lot; that is $7,600. Then there are two lots on 20th Street at $11,000, $22,000; then there is fifteen feet on 20th Street extra at $404 per front foot, on the basis of $11,000 per full lot. That would be $6,060, a total of $175,391. Add ten per cent, $17,539, will give you $192,930. That would show an addition of $163,470.

"Q. Now, turning to Exhibit No. 49, we have Block No. 666, Lot 3.

"A. That is an irregular sized lot here, referring to lot No. 3, between 11th Avenue and 13th Avenue, from 16th to 17th Streets; that contains 8,420.8 square 24350
feet. That is on the basis of the avenue, front of $6.46, $54,390. There is added to that ten per cent for the double frontage on the 10th Avenue basis; in other words, I have taken the value of a front foot on 10th Avenue here and I have applied the same value here (indicating) and I allow an advance of ten per cent on the number of square feet on account of the double frontage, these lots running from one avenue to the other. I computed the value of that and I have added a plottage of ten per cent on that.

"Q. Plottage on a lot twenty-four feet on one end and 66.11 feet on the other?

"A. Yes, but it is a whole block in itself, and has 24351
a connection with the waterfront.

"Q. But plottage is for a large piece of property combined. You have practically got only two lots here.

"A. That triangle—you have to pay it on account of its shape. For instance, take Broadway and 23rd Street, see what it is, and if you want to buy that as a whole lot you have to pay extra value, not what the lots would be according to the number of square feet represented in that triangle—or whatever it is—

"Q. Well, make it triangular value.

"A. Whatever it is. Now, there is an addition

of ten per cent for plottage and five per cent for the connections. That means for the conjunction with the waterfront here. That is $13,598, a total of $67,991.

"Q. Now, if you will take the next, which is Lot 12, just above, Block No. 666.

"A. That contains 18,628.16 square feet; computed at the same basis, $6.46 as above, $204,379. The double frontage, ten per cent, is $20,337; ten per cent for plottage and five per cent for the conjunction is $30,406, leaving a total of $224,122.

24353 "Q. If you wish to arrive at the value of the property as it is now shown on Exhibit 48, then you would deduct entirely the value of Lots 3 and 12, would you?

"A. I certainly would.

"Q. Now, take Block 716, Lot 14.

"A. Block 716, Lot 14, is a plot of 75 feet on the north side of 18th Street. Now I have valued this property, the land value, including the buildings, at $43,875, analyzed as follows: Three lots at $12,500 is $37,500, five per cent, plottage added is $1,875, which gives $39,375 plus values of buildings, $4,500, which is $43,875.

"Q. Now, take Block 715, Lots 51 to 59.

24354 "A. 715 is on the same street, on the south side, 150 feet east of 10th Avenue. There are nine lots altogether at $12,250, that is $110,250, and a plottage of ten per cent, $11,025, making a total of $121,750.

"Q. Now, turn to the next page of Exhibit 48, Block 951, Lot 35?

"A. I have valued that at $85,820. There are altogether 7 and 1/25th lots at $8,500 each, that is $59,840, and a plottage of ten per cent, $5,984, which is a total of $65,820, to which I have added the value of the buildings at $20,000 making $85,820.

"Q. Now, take Block 952, Lots 7, 29, 30 and 32.

"A. Block 952 the total value is $438,530, analyzed as follows: For the northwest corner of 20th Street and Avenue A—

"Mr. Mathewson: Northeast you mean, don't you?

"A. No, sir. Block 952 is the west corner. It is 184 feet by 517. It is the northwest corner. The northwest corner of Avenue A and 20th Street, Lot 23 by 100 an inside lot, being on the basis of $12,750 plus fifty per cent for the corner, being $19,150. The next lot adjoining the corner, 23 by 100, is $14,000. 24356
The next four lots valued at $12,750 is $51,000. The next lot is $14,000, and the corner of 21st Street and Avenue A is $19,150. Now there are sixteen lots 25 by 92 on the north side of 20th Street at $8,500 a lot, which makes $136,000. There are seventeen extra feet at $340 per front foot, which makes $5,786. There are sixteen lots 25 feet by 92 on 21st Street at $8,000, which is $128,000, and seventeen extra feet at $280, which is $4,760. The land value is $391,846, plus ten per cent or $39,184, which makes a total of $431,030, to which I add the value of the buildings at $7,500, arriving at the total of $438,530.

"Q. Now, take Block 953, Lot 1. 24357

"A. Block 953 is the entire block on Avenue A and First Avenue and 21st and 22nd Streets, I value that at $619,136, analyzed as follows: For the northeast corner of First Avenue and 21st Street, 24 feet 7 inches by 109, $25,500. The lot adjoining, $18,000. The next four lots at $17,000, $68,000. For the next lot $18,000. And for the corner of 22nd Street, 24 feet 7 inches by 100 feet, $25,500. Now, for the Avenue A front I have allowed the same as I did in Block 952. That means the total of the First Avenue front is $155,000. The Avenue A front is

$117,300. And 33rd Street lots at $8,500 a lot is $280,500, bringing it up to $552,800, plus twelve per cent for plottage here, which is $66,336, making a grand total of $619,136.

"Q. Now, take Block 970.

"A. I have valued that at $570,080, the entire block. For the northeast corner of Avenue A and 21st Street, 24 feet 7 by 100, $19,500. For the southeast corner of Avenue A and 22nd Street, $20,800. For the two adjoining lots on the avenue, each $14,000, making $28,000. For the four inside lots on the avenue,
24359 at $13,000, being $52,000. There are 19 4/5 lots on 22nd Street at $8,000, making $158,400. The same number of lots on 21st Street at $7,000 is $138,600. That is figured on the same principle here, making the block rectangular here (indicating), and allowing per square foot for the marginal front the same as before. There are 6,599 square feet on the Marginal Street, which on the basis of the Avenue A front would be $6.10 per square foot. That is $100,955. That would make altogether $518,255, plus ten per cent or $51,825, making $570,080.

"Q. Ten per cent is for plottage.

"A. Yes, sir.

24360 "Q. Now take Block 978?

"A. Block 978 I value at $539,474.

"Q. With buildings?

"A. Yes. The northeast corner of Avenue A 23 by 100, the southeast corner, 23 by 100, and the plot 46 feet by 100 adjoining the corner of 20th Street, and the plot 69 feet on the avenue by 100 on 21st Street, which on account of this lot being changed I have made the avenue front here 100 feet deep, dissected the blocks, laid it out the same as it would be in case of a sale the avenue lots would be sold 100 feet and not as they are, 70. That would be same

as Block 952 opposite on Avenue A, on the basis of $12,750 per lot less the value of the plot 23 by 70 on Avenue A, which is out; altogether 16,100 square feet at $6.30, or $10,200. That is the value for that piece of property which does not belong to the complaint. That would be $117,300, less the value of that lot, $10,200, which is $107,100. Now, the northwest corner of Avenue B and 20th Street I have estimated on the basis of 23 by 100, adding 40 to the value of inside lots, making $14,000. The southwest corner of 21st Street the same, $14,000. Two adjoining lots at $11,000 is $22,000. Four inside avenue lots at 24362
$10,000 is $40,000. 14 lots on 20th Street at $8,000 is $112,000. There are 16 extra feet on 20th Street at $5,120. There are 14 lots on 21st Street at $8,000, making $112,000. There are 16 extra feet on 21st Street at $5,120. That will bring it up to $471,340, plus ten per cent, which is $47,134, or a total of $518,474, plus the value of the buildings at $21,000, which is $539,474.

"Q. Block 987 is the next?

"A. 987 is the marginal street, Avenue B, 20th and 21st Streets. There are altogether 29,745 square feet in that plot at $3.50; that is $104,000. Ten per cent added to it is $10,400, which makes $114,400. 24363

"By Mr. Mathewson:

"Q. What is the ten per cent for?

"A. Plottage.

"By Mr. Page:

"Q. I suppose the same condition exists here. If this gas plant were removed this property would be worth about fifteen per cent more, would it?

"A. Yes, sir. If it was removed in its entirety.

"Q. Yes, in its entirety. Now take Block 1090 on page 5 of the exhibit, Lot 23?

"A. There are six lots in that plot, 24 by 100 feet

5 inches each, at $11,000, which is $66,000, plus ten per cent for plottage is $6,600, which makes a total value of $72,600.

"Q. Take the next block, 1071, Lots 10 to 13.

"A. 1071 I valued at $57,200. There are four lots at $13,000 each, which makes $52,000, plus ten per cent plottage, or $5,200, making $57,200.

"Q. Then take Block 1070.

"A. 1070, there are eight lots at $9,500, which is $76,000. There is added for plottage $7,600, making $83,600.

24365 "Q. Now, the large block 1089.

"A. 1089, that is a block between 41st and 42nd Streets. I value that block at $957,600, as follows: Northwest corner of 41st Street and 11th Avenue, 24 feet 7 by 100, $18,000. The lot adjoining the corner $13,000. The four next lots at $12,000 each, $48,000. The next lot $13,000, and the southwest corner of 42nd Street I allow 75 per cent over the value of the inside lot for that, which is $21,000. There are thirty-seven lots on 42nd Street at $12,000 each, which is $444,000. There is one lot adjoining the corner, $13,000. There are thirty-seven lots on 41st Street at $7,500, which is $276,500; and one lot

24366 adjoining the corner $8,500, makes altogether $855,000; twelve per cent plottage to that is $102,600 or a total of $957,600.

"Q. That property and the blocks 1090, 1071 and 1070 would all be increased in value by the removal of the gas plant that is on this property which you last testified to?

"A. More or less, yes, sir, because now, for instance, that 42nd Street, Block 1071, that would only slightly be benefited and still it would be benefited, so would the others.

"Q. How much?

"A. I couldn't tell you that because I can't say when you are going to do that, it is all of a speculative nature or character, and I cannot discount the future.

"Q. If there wasn't any gas plant there today how much would it be worth?

"A. About ten or fifteen per cent anyway.

"Q. And 1090 would be worth a good deal more, would it?

"A. Yes, sir.

"Q. How much would that be worth?

"A. About fifteen per cent easily. 24368

"Q. And 1089 would be advanced?

"A. Yes. 1089 would be largely benefited, perhaps twenty per cent.

"Q. Take Block 1092 on page 6 of the exhibit?

"A. 44th and 45th Streets. I value that at $647,150. That is 38 lots on 44th Street at $8,000 per lot, which is $304,000; 37 lots on 45th Street at $7,500 is $277,500, a total of $581,500, plus ten per cent plottage, $58,150, which makes a total of $639,650, to which I add the value of buildings $7,500, making a total of $647,150.

"Q. Now, take Block 1093?

"A. 1093, there are 33 lots on 45th Street at $7,500, 24369 which is $247,500; and 30 lots on 46th Street at $8,000, is $240,000, a total of $487,500, plus plottage of twelve per cent, or $58,500, making a total of $546,000.

"Q. What size lots are the 30 or 46th Street?

"A. Those lots are 25 by 100 feet 5 inches. The width of the block is 200 feet 10 inches there.

"Q. But I call your attention to the fact that the dimensions as given on this map are only 500 feet on 46th Street. That would be twenty lots instead of thirty, wouldn't it?

"A. Yes, but where are the 250 feet to come in to the easterly line of the bulkhead?

"Q. Oh, you have taken then the land in the Marginal Street?

"A. Yes, take the land to the bulkhead line or the land marked blue on this diagram. I have taken the 250 feet eventually to be the 12th Avenue Marginal Street.

"Q. If the company does not own that land in the bulkhead line on the part marked blue on this map, then you would have to deduct the value of ten lots, would you?

24371 "A. Yes, sir.

"Mr. Mathewson: No, not so much as that.

"Mr. Page: Well, the value of twenty lots, ten on each street.

"The Witness: Ten on each street, that is twenty lots per block of 250 by 200.

"Mr. Mathewson: Between the present bulkhead line and the westerly margin of the projected avenue, there are about seventy feet, as I recollect it, which even on that hypothesis would belong to the company. So that it would not take out the whole 250 feet.

24372 "Mr. Page: But the difference would be that 65 feet would be land under water. It would not be worth much.

"Mr. Mathewson: No, it is right next to the bulkhead line. I do not think it is land under water. I think it is land all built up.

"Q. This property is also occupied as a gas manufacturing plant, isn't it?

"A. Yes, sir.

"Q. And if that was absolutely removed how much would it increase the value of this property?

"A. About seventeen per cent. That is a mere

general statement on my part, you know, because I cannot tell you precisely. It would depend upon the condition of the market and the number of people that are in the market for just such property as that.

"Q. Well, I suppose the number would be about the same, wouldn't it, as today?

"A. No. I believe that they would first try to sell it as a very large plot for manufacturing purposes and not for tenement houses, and it would have to be divided up into different plots. Those are all speculative things, I cannot discount them, but that is a gen- 24374
eral idea of mine that it would be about fifteen per cent, anyway, ten or fifteen per cent, as the case might be.

"Q. Take Block 1457 next?

"A. There are 19 4/5 of a lot in the street at $8,000 a lot, that is $168,400, and the plottage added is $16,840, being ten per cent, which makes $185,240.

"Q. Take the next block, 1455?

"A. Block 1455 I have valued at $222,750. That is analyzed as follows: The northwest corner of Avenue A and 60th Street, 25 feet 5 by 100 feet, at $15,000. The southwest corner of 61st Street, $15,000. Two lots adjoining the corner at $11,000 24375
is $22,000. Four inside avenue lots at $10,000 is $40,000, and seventeen street lots at $6,500, that means in this number of seventeen street lots is included the thirteen extra feet on each street. It would be only sixteen lots and thirteen feet on each street. I made it in round figures seventeen lots of $6,500, which is $111,500. The total value is $202,500, with ten per cent plottage of $20,250, which is $222,750.

"Q. Now take Block 1474?

"A. 1474 is the northeast corner of Avenue A and is an irregular plot. You have got the dimensions.

There are altogether in that plot 5,230 square feet. I took them at $4 a square foot, which is 55 cents less per square foot than it is on the west side of Avenue A, where it is $4.55 a square foot.

"Q. Take next Block 1177.

"A. Block 1177 is a value of $194,062, divided up as follows: West End Avenue front is the same as I shall give subsequently here as to Block 1157 right opposite, less ten per cent, that is $87,500. There are sixteen street lots at $5,000 each, that is $80,000, and there are 8,835 square feet at $200 a square foot, right
24377 on the retaining wall of the Hudson River Railroad Company right there (indicating) at $17,670, that is $176,420 plus ten per cent for plottage, or $17,642, making a total of $194,062.

"Q. We will take now Block 1157?

"A. 1157, that I have valued at $701,680. I valued the northwest corner of Amsterdam Avenue and 65th Street at $25,500; the southwest corner of Amsterdam Avenue and 66th Street, $25,500; the two adjoining avenue lots on the corner, $18,000 each, $36,000; the four inside avenue lots at $17,000 is $68,000. Now, the northeast corner of West End Avenue and 65th Street I value at $14,250, the south-
24378 east corner of 66th Street, $14,250 the two lots adjoining the avenue corners at $10,500 is $21,000; the four inside avenue lots at $9,500 each is $38,000; and forty-eight street lots at $8,000 is $384,000. The total value is $626,500, plus twelve per cent plottage, $75,180, is $701,680.

"Q. And Block 1156, Lots 45 and 46?

"A. 1156 is on the south side here; that I valued at $40,100. There are four lots at $8,000, $32,000. There is five per cent plottage, which is $1,600, and the value of the buildings is $6,500, making a total of $40,100.

"Q. Now, Block 1670?

"A. 1670. First Avenue between 98th and 99th Streets. That block I valued at $667,184. The northeast corner of Second Avenue and 98th Street, 25 feet 11 inches by 100 feet, $23,870; the southeast corner of 99th Street and Second Avenue, $23,870; the two lots adjoining the avenue corners at $16,500 each is $33,000. Four inside avenue lots at $14,500 each is $62,000. Now, the northwest corner of First Avenue and 98th Street, $18,480 the southwest corner of 99th Street $18,480 two adjoining lots to the corners, $13,000 each, is $26,000; the four inside lots 24380
at $12,000 is $48,000; and thirty-six street lots at $9,500 is $342,000. Now, on those corners I have allowed fifty per cent over and above the value of an inside lot. That value would be $595,700 and adding a plottage of twelve per cent, or $71,484, gives a total of $667,184.

"Q. Why do you add a plottage of twelve per cent in this case, where you have been adding ten per cent heretofore?

"A. Well, there is a large block in its entirety with another block in its entirety adjoining owned by the same parties and both on the Marginal Street, which is a waterfront street. 24381

"Q. Well, they do not both front the Marginal Street?

"A. That is true, but when you have two adjoining blocks in one hand and they may be both wanted together for a large concern, there is a larger plottage always computed in such cases than if there is a smaller plot not of a block in its entirety.

"By Mr. Mathewson:

"Q. You mean considered together, they face a Marginal Street?

"The Witness: Yes. I took that item into consideration.

"Q. I understand your reason now. Now take Block 1692.

"A. Block 1692 I have valued at $262,697. That is the east side of First Avenue, the same value as Block 1670 opposite, less ten per cent, that would be $99,864. Twelve street lots at $6,500 each is $78,000. Twenty extra feet on the street is $5,200. There are 10,100 square feet on the marginal streets, same value as First Avenue front, 98th to 99th Streets, that is $55,752, which makes $238,816, plus the plottage of $23,881, makes a total of $262,697.

24383 "Q. This is also a manufacturing station of the Consolidated Gas Company?

"A. Yes, sir.

"Q. And these values I suppose of yours you would estimate would increase from fifteen to twenty per cent upon the removal of the plant?

"A. If the plant is removed in its entirety right away, yes, sir.

"Q. Block 1683 on page 10?

"A. 1683, Lots 18, 34 and 35 I have valued at $118,800. That is the northwest corner of 111th Street and First Avenue, 25 feet 11 inches by 100 feet, $20,000. The next lot, $13,000; the next lot $12,000,

24384 and 7 street lots at $9,000 each is $63,000, a total of $108,000, plus ten per cent plottage, $10,800, gives a total of $118,800.

"Q. Now take Block 1682.

"A. 1682 I valued at $436,700. The northwest corner of 110th Street and First Avenue, 25 feet by 100, $18,000; that is on the basis of $12,000 for an inside lot, plus 50 per cent. The southwest corner of 111th Street I have made 26 feet 10 inches by 100. As I did in the former case, I have added a surplus of one foot ten inches to that particular corner because it is right opposite this large public park

which has been created and called the Jefferson Park, and on account of that with its extra size it is much more valuable than the lots would be if the difference was divided up and added to each lot. That corner I valued at $20,000. The two adjoining lots on the avenue $13,000 each is $26,000; the next four inside lots at $12,000 each is $48,000; there are thirteen street lots at $9,500, which is $285,000. The total would be $397,000 plus plottage of ten per cent, $39,700, which would be a total of $436,700.

"Q. For use as a gas plant that park does not enhance the value of this property, does it? 24386

"A. No, it does not enhance it now at all, but the price I give you is what it is worth today.

"Q. If the gas plant was not there?

"A. Well, if a part of it was removed. If this whole thing is gradually cleared off; for instance, if you are going to sell off portions of it gradually—

"Q. If you sold off that corner, then there would be some advantage?

"A. Yes, if you want to sell that front with the corner on 111th Street right opposite that park you will get more for it than I have valued it at. That is just the case as it is with the next one. I will bring you a man who will give you more than I have 24387 appraised it for.

"Q. Go ahead, take Block 1704?

"A. I valued that at $556,827. That is the First Avenue front, which is the same as Block 1682, that is $95,000. The Pleasant Avenue front at the same value less ten per cent, $85,500. I have sixteen lots on 110th Street at $6,000, which is $96,000; I have thirteen extra feet on 110th Street at $204 a front foot, that is, $2,650. I have sixteen lots on 111th Street at $10,000. Now, those lots are the ones fronting the square, this Jefferson Park. That is

$160,000; I have thirteen extra feet there or $5,200. The total is $493,350. I have allowed twelve per cent plottage on that, that is $58,202, and the total is $556,827.

"Q. You have allowed there for the increase in valuation because of its proximity to the park?

"A. Yes, fronting on the park and fronting through on the Pleasant Avenue which is also right there a part of the park; you know from 111th Street up. The easterly side of Pleasant Avenue is all taken up by park to the bulkheads. That is a mighty fine block.

24389 "Q. Too good a block for a gas plant, isn't it?

"A. No, sir. If you take that block today and sell it for speculative purposes you will get a great deal more than I have appraised it for. I know a man who will give more than I have appraised it for, but still I don't believe it is worth that. That man figures on the resale of the property to build a saloon at a very large increase in value; in other words he expects to buy it with very little money and put a large amount of money out of his pocket into it to build a saloon and take his chances.

"Q. Take Block 1999?

"A. I valued it at $447,700. That is two 12th

24390 Avenue corners at $15,000 each, $30,000; two adjoining lots at $11,000 each, $22,000; four inside lots at $10,000 each is $40,000, and 45 street lots at $7,000 is $315,000; a total of $407,000 to which I added ten per cent for plottage, $40,700, making a round figure of $447,700.

"Q. Now Block 2175?

"A. 2175 is a very irregular piece of property on Broadway, formerly Kingsbridge Road, northeast of Elwood Street, and running through to Sherman Avenue. That plot contains 62,523 square feet, about twenty-six full city lots, which at $1.50 per square

foot would be worth $103,162 including a plottage of ten per cent. It means the land without the plottage would be worth $93,784 and a plottage of $9,378.

"Q. How much per square foot did you say that was?

"A. $1.50 a square foot.

"By Mr. Mathewson:

"Q. How many feet?

"A. 62,523 square feet; that is the nearest I can come to it.

"Mr. Page: That is all I wish to ask.

"CROSS-EXAMINATION BY MR. BURR: 24392

"Q. How long were you engaged in making this appraisal?

"A. It must be between seven and eight weeks now.

"Q. It took you all that time, did it?

"A. More or less. I went over it twice just to be perfectly satisfied. I walked over every inch of ground.

"Q. Where did you take your dimensions from?

"A. I took the dimensions from the blueprint that I have here.

"Mr. Mathewson: Exhibit No. 48? 24393

"The Witness: Yes. Where there was a discrepancy I took it from the city maps, so I have not in every instance followed exactly the dimensions given here in this blueprint.

"Q. You did not take the dimensions in any event from the deeds themselves, did you?

"A. No, sir, from the diagrams furnished me here by the gas company and where I saw, compared with the city maps, that there was a discrepancy, I made inquiries and I was told by the engineer that the discrepancy might possibly be due to their having drawn

their diagram according to old deeds and lands actually in possession, whereas the city maps would show more or less.

"Q. I notice you made a five per cent allowance for the conjunction of the land with the bulkhead?

"A. Yes, sir.

"Q. You said the other experts allowed it to the bulkheads itself.

"A. Well, that is optional. I believe that when you own a plot of ground with water front opposite the real value of the water front goes in the land and
24395 not the land value to the water front.

"Q. Well, that five per cent would not be allowed if the street was opened and in use between the bulkhead and the land on the other side?

"A. I have not allowed five per cent for the conjunction in any instance where there is a street to run through. There I have omitted the plottage altogether. I have omitted plottage on 41st and 42nd Streets, on 44th and 45th Streets, and 45th and 46th Streets, because it does not run through there. I have allowed nothing for plottage there, but that land runs out under water.

"Q. What have you allowed at 98th and 99th
24396 Streets?

"A. 98th and 99th Streets I have allowed nothing.

"Q. Didn't you allow plottage there at twelve per cent?

"A. Yes, plottage at twelve per cent, but not for conjunction.

"Mr. Mathewson: Plottage and conjunction he uses as two different terms.

"The Witness: Or call it connection with the water front, or connection with the bulkhead, that is what I generally call it.

"Q. Did you examine these buildings when you were seeking to ascertain their values?

"A. Yes—not the value of the gas plants, although I went through all the buildings in every gas plant in every block. I went and saw every building, but then I was ordered to value only those buildings that were occupied by tenants.

"Q. Did you ascertain the rentals received from those buildings occupied by tenants?

"A. Yes, sir; I did.

"Q. Now, taken as a whole, has this property improved in value within the last year? 24398

"A. Well, it has on general principles, like everything; it has increased all over the city as a whole, and certainly a portion of that increase has reverted to that property.

"Q. Well, about what per cent of increase would you place on this property within the past year?

"A. Within the past year? Well, that is hard to say.

"Q. Well, within the past two or three years?

"A. Within the past two or three years it might be about ten per cent.

"Q. Not more than that?

"A. Well, it would depend where the property is located. As you take property for instance on Lexington Avenue and 116th Street, Irving Place or on Third Avenue, it is a different computation than if you go away down on the east side. 24399

"Q. Well, take 42nd Street, the west side?

"A. At 42nd Street I think that has appreciated at least ten per cent during the last three years, perhaps more.

"Q. Take 98th and 99th Streets on the east side. That is a thickly populated neighborhood, isn't it, between First and Second Avenue?

"A. Yes, sir; it is.

"Q. How much has that appreciated?

"A. Well, certainly ten per cent; certainly, if not more.

"Q. That is a growing neighborhood, isn't it?

"A. Yes, sir.

"Q. How much, in your opinion, will it increase in value in the next two years?

"A. I could not tell.

"Q. You are now undertaking to give the present day value of this property, are you?

24401 "A. I am, yes, sir.

"Q. And what you believe it would realize if sold today?

"A. Yes, sir.

"Q. And you have testified that without the gas plants on such property that the value would be enhanced or increased from fifteen to twenty per cent?

"A. Yes, sir, if sold simultaneously, in one lump, you know, and the whole land cleared up.

"Q. When you say simultaneously you do not mean to say if all this property were sold at once, do you?

"A. Well, in the plants for instance, if you were to remove all the gas plants from 14th Street up to

24402 16th Street on one occasion, or all the plants on Avenue A from 19th to 20th Streets, it would be a different thing, and it would not necessitate the sale of the whole property together, all that property. I believe that auction prices would go from ten to fifteen per cent higher if that whole thing was put up at auction.

"Q. And has not that property increased over 30 per cent in value since 1884?

"A. Well, I cannot tell that; I have not computed that.

"Q. You would not say it had not?

"A. I would not say it has not and I would not say it has, for the reason that I have not investigated it.

"Mr. Burr: That is all.

"RE-DIRECT EXAMINATION BY MR. MATHEWSON:

"Q. In addition to your own dealings in real estate have you up to date kept track of sales of property, recorded sales and considerations all over the city?

"A. Yes, sir.

"Q. So that you have kept a record of transactions in which you had no part, as well as those in which you did have part, so far as possible? 24404

"A. Certainly.

"Q. And in making your estimates which you have given here, did you take into consideration and make a study of actual transactions, whether by you or by others, so far as you could ascertain them?

"A. Yes, sir.

"Q. I understand that your estimate of values here is as the company is now in possession of the property?

"A. Yes, sir.

"Q. You say that in some cases you examined the city's maps?

"A. Yes, sir. 24405

"Q. You did not find any material or substantial differences from the dimensions shown on Exhibit 48, did you?

"A. Not in general; only on one, and that is 14th to 15th Streets and Tompkins Street.

"Q. Was that a large difference?

"A. It was a difference of about two feet.

"Q. That is all?

"A. That is all.

"Q. Now, I understand that the value you have tes-

tified to here is what you call the value today?

"A. Yes, sir.

"Q. That is what the company might realize for the property if sold off in ordinary course?

"A. Yes, sir.

"Q. But you think that if these gas manufacturing plants were removed all at a time that that would increase the figures you have testified to by the percentage which you have named?

"A. Yes, sir.

"Mr. Mathewson: That is all."

24407

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ARTHUR W. TEELE, recalled.

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Teele, since you were last on the stand have you compiled at my request a statement of the revenues and expenses of the gas business of the Consolidated Company for the 12 months ended October 31st, 1919?

A. I have.

Mr. Ransom: That is Complainant's Exhibit

24408 No. 382, hitherto marked.

The Master: Is that in evidence?

Mr. Ransom: Marked for identification.

Mr. Chambers: Is it Exhibit 382 or 381?

Mr. Ransom: 382 for identification, the statement of revenues and expenses.

Mr. Chambers: For the year ending October 31, 1919?

Mr. Ransom: Yes.

Q. This covers two months of the year 1918 and ten months of the year 1919?

A. Yes.

Q. And is this known by you to be a correct tabulation of the matters and things therein set forth? A. Yes.

Q. As shown by the books of the company?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, that many of the records and papers upon which this paper is made are not in evidence; it is hearsay and secondary evidence.

The Master: Objection overruled.

Mr. Chambers: Exception.

A. Yes. 24410

Q. This was prepared by you in a way similar to the preparation of Exhibit 205 and Exhibit 355?

A. Similar to it, yes.

Q. And it has been verified by you, the underlying records have been verified, to the extent to which you have testified, with respect to the two months of 1918 and the eight months of 1919?

A. Yes.

Mr. Ransom: I offer it in evidence.

Mr. Chambers: I object to it upon the ground it is incompetent, irrelevant and immaterial, hearsay evidence and secondary evidence, when we have the primary evidence at hand. It is made 24411
up from papers, books and records not in evidence, founded upon statements made by persons not called as witnesses; deprives the defendants of the right of cross-examination of the persons who made up the various records used and which have not been offered or admitted in evidence; deprives the defendants of the right to cross-examine the persons upon whose statements some of the entries or items were made up.

Mr. O'Brien: Your Honor, I join with the Deputy Attorney-General in his objections, and

I object on the grounds stated by me in connection with the other exhibits of the witness Teele, particularly the objections set forth in the record of September 17th, I think it was, where I enumerate specifically all of the various objections made.

I add the additional objection that the witness has been recalled for further examination, our cross-examination of the witness as to all the previous exhibits having been finished and closed; and the further ground that the period in question covered by the exhibit is unusual, inordinate and misleading, taking a year from October to October, which is not the fiscal year, not the year recognized by the Public Service Commission in their reports, not the working year, as not embracing the customary months that might form a fair basis for any conclusion as to expenses covering a long period in the gas-making business.

24412

Mr. Clark: I join in the objections of the other defendants.

The Master: The objections are overruled. The paper will be marked in evidence as Exhibit 382.

24414

Marked Complainant's Exhibit No. 382 in evidence.

Q. Mr. Teele, the year covered by this Exhibit 382 is identical with the period on which the gross earnings tax is computed?

A. It is. That is, the gross earnings tax—yes, the gross earnings tax, for each calendar year.

Q. Mr. Teele, have you prepared in the same way that you prepared the similar exhibits for 1918, and the eight months of 1919 a statement of the cost of

production and distribution of the complainant company for the twelve months ended October 31, 1919?

A. I have.

Q. This being Complainant's Exhibit 387 for identification. This is known to you to be correct?

A. Yes. The method of preparation is similar to that of Exhibits 364 and 365.

Mr. Ransom: I offer it in evidence.

The Master: Same objections, I suppose, by all counsel, as to Exhibits 364 and 365.

Mr. Chambers: Yes, the same objections are made, repeated in full. 24416

The Master: And as to Exhibit 382. The same ruling, and it will be marked.

Mr. O'Brien: The same objections, your Honor, that I made as to all the Teele exhibits, and particularly the objections that I made to Exhibits 364 and 365.

The Master: Yes.

Mr. O'Brien: I note an exception to your Honor's ruling.

The Master: It will be marked as Exhibit 387.

Marked Complainant's Exhibit No. 387 in evidence. 24417

Q. Have you prepared from the books and records of the complainant company a statement of real estate improvements other than plant owned and used in the gas business, from 1906 to 1918, inclusive, of the complainant company?

A. I have.

Q. And is this such paper (handing to witness)?

A. Yes.

Q. And prepared in the manner which you have previously testified as to the other similar exhibits?

A. Yes.

The Master: Additions and withdrawals?

Mr. Ransom: Yes.

Mr. Chambers: This is a new one he has given us this morning for the first time.

Mr. Ransom: I may say that the items of additions and withdrawals, insofar as they are within the issues of this case, were made up in a statement which was furnished to the defendants last May, or partly in May and to part of the defendants early in June. It was made on a basis by which it was linked up to the Court's findings,
24419 consequently was not in a shape acceptable as an exhibit under your Honor's ruling, and I have had it made up in a form which comes within your Honor's rulings. The items are the same, except that there is no setting forth of the Court's findings as they were embodied in the decree of the Circuit Court in the prior case.

Mr. O'Brien: Will Judge Ransom kindly explain what ruling he refers to?

Mr. Ransom: The ruling of his Honor early in the case, that the findings of the Master as modified by the Circuit Court and as passed upon by the Supreme Court of the United States were
24420 not admissible in evidence in this case as proof of the facts therein set forth. That was a view as to which the complainant was in disagreement with the Master, but as to which we have modified our offer to meet that ruling.

The Master: As I understand it, Mr. Teele's testimony is that this paper marked "Real Estate Improvements Other Than Plant Owned and Used in the Gas Business, 1906 to 1918," is a correct tabulation of the books showing items of that character, for that period?

The Witness: Yes, sir.

By the Master:

Q. You do not know anything about it yourself, except that it is a tabulation from the books?

A. That is all, and represents the additions and withdrawals as shown by the books, against the properties as set forth herein.

Q. And your testimony is that this tabulation is correct; not necessarily that the money was actually expended in each instance, except as you have already testified that you believe the books to be correct?

A. As I have examined the vouchers in connection with it. 24422

By Mr. Ransom:

Q. You have gone into the vouchers on these matters the same as you did as to the other exhibits as to additions?

A. Additions to plant; the vouchers of all expenditures.

The Master: You offer this, do you?

Mr. Ransom: I do.

The Master: I suppose the same objections are made by the defendants as to all the other exhibits offered, of the witness Teele.

Mr. Chambers: Yes, sir.

Mr. O'Brien: I make the same objections as I did to all the Teele exhibits, and on the further ground it has not been explained in his direct testimony how he got this up, except in an answer to a blanket question put by Judge Ransom just now. 24423

The Master: Objections overruled.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Mr. Clark: Exception.

Marked Complainant's Exhibit No. 389.

Mr. O'Brien: I call to your Honor's attention that this is an entirely different kind of exhibit, which would call for further explanation, taking him under cross-examination before it should be admitted.

Mr. Chambers: For information, do you mean that is one of the statements you gave us?

Mr. Ransom: There was furnished to the defendants in May and June a statement which was called "Real Estate, Including Improvements Other Than Plant Used in the Gas Business, December 31, 1918," which covered both land and improvements and showed as a basis and was supposed to link me with the findings of the Court in the prior suit.

24425

Mr. Chambers: Is that it?

Mr. Ransom: That is the one.

Mr. Chambers: The one? This is only for 1918—oh, excuse me.

Mr. Ransom: I should be very glad to have this in evidence, the original form of it, but under your Honor's ruling it would probably not be received.

The Master: What else have you got?

24426

Mr. Ransom: I just simply wish the record to show that I have furnished to the defendants:

The details of Interest on Taxes, 1906 to 1917, inclusive:

The details of special franchise taxes, 1906 to 1917, inclusive:

The details of real estate of corporations taxes, 1906 to 1917, inclusive:

The details of personal property tax, 1906 to 1917, inclusive:

The details of gross earnings tax, 1906 to 1917, inclusive:

24427

The details of the taxes levied on the privilege to maintain and use two tracks across East 21st Street, between Avenues A and B, which cover only the period from 1906 to 1909, inclusive;

The details of the Federal capital stock tax, 1917; and

The details of the Federal income and New York State excess dividends taxes, 1906 to 1917, inclusive.

These complete the details called for by Mr. Clark and with respect to matters underlying Exhibit 366. I ask to have these marked for identification.

24428

The Master: Mark them separately.

Marked respectively Complainant's Exhibits No. 390 to 397, inclusive, for identification.

The Master: Major Clark, I think I will let you finish your cross-examination on Exhibit 366 now.

Mr. Clark: If your Honor please, I have not had a chance to consult with my experts about this data. I do not know what condition it may be in. I would prefer to have an opportunity of taking it up with him this afternoon or tomorrow morning. I understood that Judge Ransom was going to let me have them some time before Mr. Teele was recalled, so I would have that opportunity. I would appreciate an opportunity of going over it.

24429

Mr. Chambers: May I also ask when you are going to furnish the data on the cost of distribution and cost of production that the Master directed for all the years?

Mr. Ransom: As fast as it can be typed.

The Master: What is that?

Mr. Ransom: As fast as it can be typed.

Mr. Chambers: Our experts would like to get it.

Mr. Teele: It will not be ready by tomorrow morning, but I expect it will be ready for Monday morning.

Mr. O'Brien: We ought to have an opportunity to cross-examine on that. He was to furnish us that data.

Mr. Ransom: They have asked literally for piles of underlying material. We are glad to
24431 do the best we can, but the making up by us of a great deal of data which the defendants' experts or the experts of some of the defendants made up for themselves months ago, and which they have made up months ago all of that has presented a very serious question. Mr. Teele's men have been working to the breaking point.

Mr. Chambers: So have ours.

Mr. Ransom: Getting a lot of this stuff together. I should hate to see the going forward of the case held up merely because they have called for such a prodigious quantity of material.
24432 We furnished partly several days ago and including this morning everything that Mr. Clark called for in the statement which he made. There was furnished to the defendants at that time Mr. Teele's working sheets on these taxes.

The Master: I think that we will probably save time, if you have other witnesses to finish them up. You have handed counsel some new figures today that they will want to cross-examine about.

Mr. Ransom: There are no new figures that we have furnished today.

The Master: Well, new tabulations.

Mr. Ransom: There is only one tabulation which is even remotely new.

Mr. O'Brien: Don't say that, Judge Ransom.

Mr. Chambers: Oh, yes, I challenge that. There are figures in this one here that do not agree with the one you gave me. That is why I asked you.

The Master: Do not argue that, Mr. Chambers.

Mr. Chambers: It is an entirely new piece of 24434
paper.

The Master: I think in this case we would get along much better if the other side has a chance to analyze these tabulations, so that they will get to the point on the cross that is essential. Otherwise I shall have to let counsel ask all sorts of questions which are in the nature of fishing questions, and that I do not like to do. Have you any other witnesses?

Mr. Ransom: I will have another one at two o'clock.

The Master: Have you got enough to keep me busy today and tomorrow, winding up the rest of 24435
your case?

Mr. Ransom: Yes.

The Master: Then I am going to ask, is there any other tabulation that Mr. Teele is going to testify to?

Mr. Ransom: I know of none.

The Master: Then I have everything now except this data about cost of production and distribution?

Mr. Ransom: As far as I know.

Mr. O'Brien: What do you mean by having everything, your Honor?

The Master: All of the tables and tabulations that Mr. Teele is going to testify to.

Mr. Chambers: There are just those two which we have been talking about, which we need very badly. I know how difficult a task it is to make it up, and I know it would take us some time to check it.

The Master: I want to get all the light I can on that cost of production.

24437 Mr. Ransom: The difficulty is they are asking us to do their work all the while.

The Master: That is all right, I do not care how it is done.

Mr. Ransom: But we would rather do it.

The Master: I would like to spend another week on this cost of production, if it is necessary. I have studied these figures a great many times and they are very interesting.

To give you what is in my mind, take the sale of gas beginning in 1909, or say 1912, it runs to thirteen million dollars a year, or it ranges between thirteen and fourteen now. Apparently

24438 the only item that has gone very far astray from what it was years ago is that cost of production item. Whereas in 1913 eleven million dollars' worth of gas, cost of production, was six million dollars, it is now claimed according to their last paper that I got this morning it is now nearly fourteen million or twelve million.

The cost of distributing seems to have run almost the same throughout the years, for the last six or seven years, about three million dollars. The uncollected gas bills were a little more

24439

in 1918, and they ran as high as $103,000 in 1909, but they averaged fifty or sixty thousand dollars throughout the years. Renewals and Replacements run five or six or seven hundred thousand dollars throughout the years. Interest on Consumers' Deposits runs about the same. Taxes have gone up a bit, but not in such tremendous proportion.

So that, so far as the Gas Company's figures show—and I do not mean to be understood as accepting any figure at this time—apparently their claim is that the loss they are suffering now 24440
is due to the cost of production, namely, the material and labor that goes into the actual manufacture of the gas. That is why I would like to get all the light I can get on it. My mind is receptive of that claim. If they are at all right, that it cost them six million dollars to make thirteen million dollars worth of gas in 1912 or 1913, my mind easily accepts the claim that it costs them nearly twice as much to make it today. I am talking frankly to the men in the court room here.

Mr. Chambers: May I say now they are carrying the Astoria capital invested there in their 24441
production. They did not used to do that before the Astoria plant was in operation.

The Master: That may account for some of this, but I am frankly telling you men my mind easily absorbs and accepts a claim, and I am very much impressed with the claim, that it costs nearly twice as much to actually make the gas now as it did six or seven years ago.

Mr. Chambers: You stopped cross-examination on that, as you remember. I looked it up

yesterday. We are going to attack those figures of cost of production with great care and analyze them.

The Master: Once my mind gets on a line of thought it runs very much that way all the time. That is why I want to give the defendants the fullest opportunity to analyze and criticise your claim that your cost of production has gone up to that extent.

Mr. Chambers: If you had given us those earlier we could have made more progress.

24443 Mr. Ransom: May I say just two words on that. From the viewpoint of the complainant we have never believed that these figures which we have produced here in response to inquiries for these details, covering 1906 to 1917, are within the issues of the case or have any helpful bearing on the case.

The Master: I disagree with you there.

Mr. Ransom: I realize that you do.

The Master: I disagree with you there for this reason, that when you produce here before me under the other oath of Mr. Teele a statement showing your books throughout the years,

24444 which show that practically every item except cost to produce has run about the same, it rather confirms my mind that your books are reliable, because I can see where the cost to distribute—that is, the mains, the labor, the clerk hire—has not gone up so much.

Mr. Ransom: Has not gone up much, if any.

The Master: Has not gone up as the labor cost in production. So that I think it is helpful. I am thinking as the proof goes in. My mind is working. It may be working in circles and I may be wrong.

Mr. O'Brien: It is working in a whole lot of error, your Honor.

The Master: What?

Mr. O'Brien: It is working in a lot of error.

The Master: I say that may be so.

Mr. O'Brien: I can point it out to you now. You are starting with the assumption; you say your mind now accepts the claim made by the complainant as to certain branches of expense.

The Master: I say my mind easily receives that claim.

Mr. O'Brien: I want to say to your Honor 24446
that you are starting with the assumption that their expenses in 1909 were all reasonable and necessary.

The Master: No, I do not even start there, but what I say is, taking the same basis of charging items on their books which they have apparently done through the years—

Mr. O'Brien: They just came out of a rate case in 1909, your Honor.

The Master: I do not care anything about that.

Mr. O'Brien: Your Honor, we have a right 24447
to build certain presumptions—

The Master: Since 1909 these books have been under the supervision of the Public Service Commission, have been kept in accordance with law and the rules of the Public Service Commission; the entries have been made uniformally in the same way. Assuming they were high or low, beginning any year back, and assuming the entries were made on the same wrong basis, they indicate that the cost of production is what is causing the trouble they are complain-

ing of now, and that is why I am going to give the defendants the fullest opportunity to attack, criticise and analyze that item; that is why I am inclined to postpone Mr. Teele's cross-examination until the very last thing in this case to get it off as long as possible, so that the defendants can bring out from Mr. Teele anything at all that will be helpful from the defendants' point of view, as bearing upon the claim of the complainant, that the cost to produce the gas has gone up nearly one hundred per cent in the last
24449 six or seven years. That is my view about it.

Mr. Ransom: We can go ahead this afternoon and tomorrow, and of course we are glad to supply these details. It is a serious thing for this company to have the case delayed.

The Master: Well, I would not be delaying it. I am not going to delay it; I am going to have Mr. Teele follow the last thing that you have got to do.

Mr. Ransom: The defendants have, I may say, started in on this cost of production, on these other figures from 1906 to 1917, very early in
24450 their work up there.

The Master: What difference does it make whether I go on with this cross-examination now or Monday afternoon?

Mr. Ransom: Monday morning.

Mr. O'Brien: Your Honor, the point Mr. Chambers wanted to make was this, that during the course of the cross-examination of the witness Teele the examination was limited—the cross-examination was limited. We claim that it was unduly limited, that our rights have been jeopardized and embarrassed.

24451

The Master: Are you talking for yourself now, or for Mr. Chambers?

Mr. O'Brien: I am talking for him and myself.

The Master: You talk for yourself; if Mr. Chambers wants to say anything he will say it himself.

Mr. O'Brien: And during one part of the cross-examination an attempt was made to go into details, and your Honor directed that the witness prepare certain details as to these matters, and they have not as yet been produced.

24452

The Master: Do not let us waste any more time on it. The books have been subject to your inspection for many months. I am inclined to give him an opportunity to look at it. If you cannot get it through, tomorrow or Saturday, will you give it to them on Monday, in time to give them a few days to look at it, because to my mind it is the most important feature of this case.

Mr. Ransom: They ask for the basis so that they can determine whether we have correctly made up this Exhibit *366*.

24453

The Master: I know the situation; you do not need to argue it.

Mr. O'Brien: No, there is no need of any cross-examination—no need, with this Juggernaut.

The Master: I am going to give them an opportunity to look over this data on cost of production, so that we can get some useful and helpful cross-examination in a short space of time, or without wasting any time.

Recess.

Afternoon session.

JAMES E. ALLISON, a witness for the complainant, being first duly sworn, testified as follows:

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Allison, where do you live?

A. St. Louis, Missouri.

Q. What is your business or occupation?

A. I am a consulting engineer, specializing in valuation and rate-making work.

24455 Q. What is your firm?

A. James E. Allison & Company.

Q. What is your education, and what special subjects of study have you pursued?

A. My special subject of study for the last eleven years has been valuation and rate-making.

Q. What has been your practical instruction in connection with the firm of Hooven & Allison?

A. That is merely an instance way back. I graduated from college, where I had taken courses in mathematics, physics, drawing, etc., to fit me for mechanical engineering to take charge of the Hooven

24456 & Allison mills. After coming out of college I was placed as a student engineer with the Hooven & Allison mills as mechanical engineer on machine design, and placed as a student engineer in the Xenia Gas Works, and afterwards made general manager of that company.

Q. That is Xenia, Ohio?

A. Yes.

Q. What did you do after that?

A. In the engineering line I went to Nashville, Tennessee, and became manager and chief engineer of the Southern Manufacturing Company, which manufactured street railway equipment.

24457

Q. That was about 1890?

A. Yes, a little after that. I do not remember the exact time. Then after the Spanish War—I went into the war, and coming out I went to St. Louis and established an office as a consulting mechanical engineer, and was then made consulting engineer for one of the departments in the World's Fair, and was afterwards made head of the Department of Inspection of Boilers and Elevators for the City, and chairman of the examining committee for Power Plant Engineers. In 1909 I was appointed chief engineer and commissioner of the St. Louis Public Service Com- 24458
mission.

Q. What was the jurisdiction of that commission with respect to properties and valuation?

A. At that time there was no state commission; we had jurisdiction in the way of making—our business was to make valuations of all the public utilities in St. Louis and recommend rates. The city legislative body had to pass on our reports.

Q. You were a valuation body?

A. Yes, we were a valuation and rate regulation body. In fact, we had regulation of service, too.

Mr. O'Brien: You say "we." You mean the Public Service Commission, not the engineers? 24459

The Master: The question will not be allowed.

Q. Were you a member of the commission?

A. I was a member of the commission and chief engineer of the commission.

Q. How long were you chief engineer and a member of the St. Louis Public Service Commission?

A. Four years.

Q. During your incumbency of that office, what was the nature of your particular work?

A. To make a valuation of public utility properties.

Q. Did you have charge of that work as its head?

A. I had charge of that work, laid the work out from the beginning, selected the staff and directed practically their education in the work.

Q. Supervised the work?

A. Supervised the work.

Q. And made the determination according to the results of the work?

A. And wrote the reports.

Q. In 1913, did you resign from that commission?

A. Yes.

24461 Q. After resigning from the commission, what work did you engage in?

A. Establishing the firm of James E. Allison & Company as valuation engineers or consulting engineers, specializing in valuation, rate making, and were open for general practice. Our clients are both cities and companies.

Q. That is both public officers and bodies and public utility corporations?

A. Yes. We have the Cities of St. Louis, Lawrence, San Antonio, on our list of clients.

Q. And since 1913, you have been engaged in this business of valuing the property of public utilities?

24462 A. Exclusively.

Q. Will you name a few of the more important valuation works in which you have been personally engaged?

A. Well, the Laclede Gas Company.

Q. Which is in St. Louis?

A. Yes. We have made two valuations for them, one in 1913, and one we are just finishing now. That is a property—those two valuations involved about $70,000,000. We have made for the city, since resigning, a valuation of the street railway property.

Q. That is the United Railway Companies?

A. The United Railways Company. We made one as a commission and in a recent rate case made another for the city.

Q. That is in St. Louis?

A. Yes.

Q. Did you value the New Orleans Street Railway system?

A. That was a report on service.

Q. For whom?

A. We valued the East St. Louis & Suburban Railway, the East St. Louis Railways and—

Q. (Interrupting.) International Railway of Buf- 24464
falo?

A. The International Railway of Buffalo. I did that as a member of the Board of Arbitration created by a city ordinance. I was the arbitrator selected by the company.

Q. For whom did you do the New Orleans work?

A. For the city.

Q. Did you do any work in Kansas City?

A. Yes. I have valued the telephone, the Home Telephone Company there twice, once recently for consolidation with the Bell and had made a report to the Court there as arbitrator in a dispute between the City Board of two engineers that operate the street 24465
railroad and the company engineer. That report was on the question of expenses and charges to capitalization and operation. I cannot recall now all the work.

Q. Well, Johnstown, Pa., Gas Company?

A. Johnstown, Pa., Gas Company, yes.

Q. Did you do any work for the President's Conference Committee of the railroads of the United States?

A. Yes, I made a report to them.

Q. When was that?

A. I think that was two years ago.

Q. That was a committee convened by the President with respect to war uses of railroads?

A. No, it was a committee—it was before the war I made that report, and the committee was a committee of presidents of all the railroads of the United States who have charge of the valuation work—general supervision of the valuation work of the railroads of the United States.

Q. Under the Act of Congress?

A. Yes. Not a body—

Q. (Interrupting.) Well, the valuation under this
24467 Congressional Act?

A. Yes.

Q. Could you give any indication of approximately the total amount of property of all kinds which you valued?

A. I think it was about a quarter of a billion that we have valued, in round figures.

Q. That includes gas properties?

A. Street railway properties.

Q. Electric light?

A. Electric light properties and telephone properties, water works properties.

Q. You said you have frequently been consulted
24468 both by cities and companies on various questions involved in the valuations of properties?

A. Yes, that is a part of my business.

Q. And you frequently appeared before Congress and commissions in proceedings involving property values or elements of property?

A. Yes, that is one branch of my business.

Q. You have been frequently retained by bankers and investors to report on properties and their value?

A. Yes.

Q. Have you written for publication on the subject of valuation?

A. Well, most of my writings are in the form of reports, but I have written something for some of the magazines, made some papers for the gathering of utility men, or for the economic associations.

Q. Written various papers for the Journal of Economics and the like?

A. Yes.

Q. Are you a member of any engineering society?

A. I am a member of the American Society of Civil Engineers and the American Society of Mechanical Engineers.

Q. Have you made any examinations and studies into the operation and valuation of public utility plants, including gas plants?

A. That is a constant part of our work in rate cases.

Q. Also into their expenditures for operation, maintenance and construction?

A. That also comes in constantly.

Q. According to your observation, Mr. Allison, in a large and well-managed gas plant, do all the portions of the plant go out of service at once?

A. They do not.

Q. What does take place?

A. Well, they go out—

Mr. O'Brien (interrupting): Just a minute, your Honor. Since that is marking the beginning of the examination as to some branch of this case, I would like to interject here an objection on the ground the witness has not qualified as an expert. I would ask for the time being that the last question and answer be stricken from the record.

The Master: Objection overruled; motion denied.

Mr. O'Brien: You are going to take it, I assume, conditionally. You are accepting the wit-

ness subject to cross-examination as to his qualifications at the same time as the cross-examination in general?

The Master: Judge Ransom has established a basis for asking the witness questions of opinion evidence. I shall receive them.

Mr. O'Brien: And I note an exception on the ground the witness is not qualified to testify now as to the workings of a gas plant, has not been shown to be qualified in that he has never run a gas plant, and he has never been an officer of
24473 a gas plant. He has, so far as the outlines of his career go in his direct-examination, never made but in one instance an examination into the records of a gas plant, and the matters that he is now being questioned about are not the subject of opinion testimony entirely segregated from actual experience with the works in question.

The Master: My ruling will stand.

Mr. O'Brien: Exception.

Q. What has been your observation in that regard, Mr. Allison?

A. I was an officer of a gas plant.

24474 Q. I mean with respect to the subject-matter of the last question?

A. Pardon me?

The Master: Does all the material go out at once, all the plant fall out at once?

The Witness: It does not, it goes out gradually.

Mr. O'Brien: Does this testimony—it does not go out all at once—that is a general statement—do all the parts of a gas works go out at once, and I object to that as entirely too vague.

The Master: I thought you had objected to it.

Mr. O'Brien: I am objecting concretely to this particular question.

The Master: Objection overruled. The witness will answer the question.

Mr. O'Brien: I submit there is no foundation laid for it.

The Master: I submit I have made my ruling.

Mr. O'Brien: Exception.

The Witness: All parts of the plant do not go out at once and are, as a rule, replaced as 24476
soon as they go out.

Q. That is, they go out gradually and are replaced from time to time?

A. Are replaced as a general rule.

Mr. Chambers: I object, "They are replaced as a general rule."

The Master: Yes.

Mr. Chambers: How does he know?

The Master: I will take it.

Mr. Chambers: Exception.

Q. Assuming that wear and tear are counteracted by renewal, replacement and repair, does the fact that certain periods of time have elapsed since the in- 24477
stallation of different items of physical property going to form a gas plant limit, diminish or depreciate the length of life of the plant as a whole?

Mr. O'Brien: Objected to on the ground that it assumes facts that have not been shown in this case.

The Master: What facts?

Mr. Chambers: That wear and tear are counteracted.

Mr. O'Brien: The stenographer will read the question.

(The question was read by th
rapher.)

Mr. O'Brien: Three elements there
assumed that are not in this case.

The Master: Let us hear what they

Mr. O'Brien: Wear and tear.

The Master: What else.

Mr. O'Brien: It has not been show
ness examined this particular plant.

The Master: What else?

Mr. O'Brien: There is the assump
24479 not in this case that the wear and te
teracted by replacements; that the w
has not testified that he has seen a
ments and knows what the replaceme

The Master: What other point hav
What other assumption is made in t
that you do not think is proper?

Mr. O'Brien: The last part of th
assumed, your Honor.

The Master: Objection overruled

Mr. O'Brien: Exception. There
proof here that the lapse of time b
thing is done—

24480 The Master: I have made my ruli
the question.

Mr. O'Brien: I would like to a
due respect to the Court, do you un
question yourself?

The Master: Yes. If I did not
it I should so announce. Answer t
Mr. Allison. You understand it, do

The Witness: Yes, I understand

Mr. O'Brien: Why, he has writt

The Witness: It does not limit
the reason that—

The Master: Does it diminish it?

The Witness: It does not diminish the life as compared with a new plant.

The Master: Your testimony is that if a plant is kept in repair, it will last forever?

The Witness: Last as long as a duplicate plant will.

The Master: Go ahead.

Q. Does such lapse of time limit, diminish or depreciate the usefulness of the plant?

Mr. O'Brien: If you will separate the time from the other things here— 24482

The Master: Will you please take your seat?

Mr. O'Brien: I will, your Honor.

The Master: Isn't that a duplicate of your last question?

Mr. Ransom: Not quite.

The Master: In what sense does it differ?

Mr. Ransom: Well, one related to the length of life of the plant, and this relates to the usefulness of the plant.

The Master: Isn't one inclusive of the other?

Mr. Ransom: We do not think so, wholly.

The Master: Answer the question.

Mr. O'Brien: I object to it. 24483

Mr. Chambers: I object on the ground that the wording "such lapse of time" refers to some lapse of time which has not already been referred to.

The Master: Objection overruled.

Mr. Chambers: Exception.

The Witness: It does not as compared to a new duplicate plant. The lapse of time does not bring a piece of equipment which has been established for a certain length of time any nearer to its end on account of obsolescence or inade-

quacy than a new one would be, and it would be just as near going out as the old one would be, the new duplicate one, and those two exact similar pieces of equipment, one which has been in operation twenty-five years, and kept up to an efficiency equal to a new one, being duplicates, will go out at the same time by obsolescence or inadequacy.

The Master: You mean as a whole?

The Witness: If they are duplicate plants, they will go out, the new one and the old one, at the

24485 same time.

The Master: But the plant that was kept up by repair is apt to fall down or break down in spots that a new one would not for a long while, wouldn't it?

The Witness: No, sir. After the plant has been in operation and the operators are thoroughly familiar with it, it is in a much better state, so far as maintenance and upkeep, than a new plant, and especially so with a gas plant or water plant.

The Master: There are parts of a machine that wear constantly?

24486 The Witness: There are, but there are to every well-designed machine, and no buying official should be allowed to buy a machine in which the wearing parts are not renewable. It is almost universally the case.

The Master: I am assuming that they are renewable, but what I am getting at is this, and I am using a very simple illustration of an automobile that I happen to know when I see one. I could go and buy a second-hand automobile—

Mr. O'Brien: Take my tip, your Honor, and don't.

The Master: Will you please keep quiet (continuing): And that car has been overhauled by the makers of the car and they have looked all through it and they have replaced all of the broken or worn parts, you say that car is as good as new, do you?

The Witness: No. I say that that instance is not comparable to a public utility.

The Master: Why?

The Witness: If you had a thousand cars, and you were using that thousand cars all at different times, in, we will say, a taxicab service, and 24488 you kept your cars, a car itself will go out, just as the engine itself will go out in a utility, or the retorts will go out, but it is a small part of the utilities by itself in its renewals, so that your utility is always kept with an equipment that will operate.

By Mr. Ransom:

Q. Does a gas plant, properly maintained, have any definite end to its life?

The Master: Have what?

Mr. Ransom: Any definite end to its life.

Mr. O'Brien: I object to this, your Honor, as incompetent, irrelevant and immaterial. 24489

The Master: That will be enough. Objection overruled. Answer the question.

Mr. O'Brien: Exception.

A. It has no definite end to its life any more than a tribe of people has a definite end to its life, if the parts are renewed and replaced as they go out. It is an organization like a tribe of people; you can estimate the life of one man like one piece of equipment, but the tribe has no end to its life if there is a proper birth rate, and in the utility, as long as you make your replacements, not only are you keeping

up to the analogy of the tribe by keeping your utility going on, but it has no end to its life.

Q. The plant is continuously renewing itself?

A. The plant is continuously renewing itself.

Mr. O'Brien: Does not this shock your Honor?

The Master: No, nothing ever shocks me.

Q. Can the different items in the equipment of a gas manufacturing plant have a definite life truly assigned to them for the purpose of calculating the value of the plant as a whole?

Mr. O'Brien: Your Honor, I object to that.

24491 The Master: The same objection will run to this question. Same ruling and exception.

A. If the wear and tear were excepted they can have no definite life, because no one can foresee when they are going to become obsolete and inadequate, and those are the only two other causes for their disappearance.

Q. Assuming, Mr. Allison, that the gas plant of the complainant company, comprising the buildings, structures, apparatus and facilities used in or in connection with the manufacture, distribution, sale and delivery of gas, has been properly and adequately maintained through repairs, renewals and replace-

24492 ments made from time to time as and when required; assuming that such parts as have actually worn out have been made good and that the plant is in a good and efficient operating condition; that the plant is operated as an established and going concern, that it has been and is rendering continuous and efficient service, and that with a relatively small expenditure of money the plant could be put in condition as good as new—what is your opinion as to whether or not the value of the gas plant is depreciated below its present reproduction cost new?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial. He uses descriptions there which make the question in my judgment improper on its face—like plant properly and adequately maintained, without defining how a plant would be maintained in that way.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. Clark: I object to it on the ground that it is a question for the Court to determine, as to what the reproduction cost or value of any plant is. 24494

The Master: I am going to take this witness's opinion evidence on the subject.

Mr. O'Brien: Your Honor, I object to it on the ground that the assumptions have not been shown in this case. Therefore, there is no foundation laid for this hypothetical question. Second, the witness has not been shown to be acquainted with the various things that are assumed in this question of the complainant company. Third, upon the ground that it is entirely speculative, that it assumes facts that are contrary and theories that are contrary to those that he has already shown he adheres to. 24495

The Master: Objection overruled.

Mr. O'Brien: He has indicated that there are three causes for some parts of plants, and plants, going out of business, wear and tear, obsolescence and inadequacy—and none of these three elements that mean the expiration of plants or parts of plant are taken care of in this question.

The Master: Objection overruled. Read the question again to Mr. Allison.

Mr. O'Brien: The further ground of my objection is that reproduction cost new is not the

value of the property; it is not a method of determining the value of the property approved of by the Courts, except in a few cases where both sides to the litigation put in their case upon that theory, and that especially in the war time period it cannot be taken as even a guide to true value.

The Master: The objection is overruled.

Mr. O'Brien: Exception.

A. The word "replacement" there in that question takes care of the two elements of inadequacy and obsolescence.

24497 Mr. O'Brien: Did you frame this question, Mr. Allison?

The Master: Mr. Allison will not answer that question.

Mr. O'Brien: Exception.

Q. What is your answer to the question which I asked you? Assuming the facts which I stated, what is your opinion as to whether or not the value of the gas plant is depreciated below its present reproduction cost new?

A. It is not depreciated below its present reproduction cost new if the proper measure of value is used.

Mr. O'Brien: Did you say if it was used?

24498 The Witness: The proper measure of value Under any proper measure of value it is not depreciated.

Q. In your judgment and experience does the present reproduction cost new of the property fairly represent the present investment in the property?

Mr. O'Brien: Just a minute, your Honor. That is something that cannot be measured by opinion evidence. There is a concrete fact.

The Master: Read me the question.

(The question was then repeated.)

Mr. Chambers: I object to the question as a question for the Court to determine.

The Master: I will take it as a matter of opinion and permit the witness to answer.

The Witness: Your Honor, can I give my basis of opinion?

The Master: No, just answer the question. Perhaps the other side may ask you for the basis of your opinion.

Mr. O'Brien: I object to it on the ground that the terms are not defined. Where he speaks of investment value it is not clear whether those 24500
are terms used by court decisions or whether he means original cost.

The Master: I am going to take it as it is asked.

Mr. O'Brien: Exception.

Mr. Ransom: What is your answer?

A. I will have to ask that the last part of the question be read again.

Q. In your judgment and experience does the present reproduction cost new of the property fairly represent the present investment in the property?

A. Yes.

Q. Why? Give the reasons for your answer? 24501

A. The present investment is represented by the present value of the property just as I should have bought some stocks and put them in my box—bought them at fifty cents and now they are worth a dollar and a half. My present investment is a dollar and a half in those stocks, because I can take it out and put it in something else. So the present investment in a public utility is its present value; and the only measure of present value is reproduction cost, for the reason that value must be a measure of an exchange, that the only exchange or potential exchange we can

have in a rate case representing present value and present exchange is present reproduction cost because we must eliminate in a rate case the value created by the earnings for the reason that that is the question in the case. The only exchange you have to measure value by, the present value, is the potention exchange of reproducing the value. That can be illustrated by—

Mr. O'Brien: Hold on, Mr. Allison. I am going to object, your Honor. He has given an answer to a question and now he is going into a disquisition, and we certainly do not want to start

24503 a symposium here.

The Master: I think I will agree with Mr. O'Brien on the matter of this symposium.

Mr. O'Brien: He is writing a book here. He tried to do that with Judge Greenbaum. Judge Greenbaum asked him to state his theory and he started to deliver a lecture. Just when he shut it out the counsel for the Kings County Lighting Company handed it in as a book.

The Master: Was not Judge Greenbaum interested in it?

Mr. O'Brien: No. His decision will be out in a few days; he will tell you what he thinks of it.

24504 Q. Will you illustrate your answer?

The Master: No, I will not take that.

Mr. Ransom: Exception.

Q. Does the amount of capital represented by the property of a company as a whole diminish with the lapse of time since the installation of individual items in the plant?

Mr. O'Brien: Your Honor, I object to that on the ground that the witness's qualifications, if he has any, shown by the examination in the beginning were not extended to some abstruse problem in finance which is just now being put up to

the witness. They are dealing now—I do not think you get out of the mist when you first hear it.

The Master: Judge Ransom, is not that a duplication of what you had in several forms?

Mr. Ransom: No, this relates to the investment

The Master: You ask whether the plant depreciates, you ask what represents the investment. The witness said it represents reproduction cost, and now you ask does the investment depreciate. You did ask whether the plant de- 24506
preciates. I will let him answer it.

Mr. O'Brien: What I am driving at here now is that you are going into some problems in finance. We might have expected to have it brought out while the distinguished and snow-covered Emerson McMillin was on the stand. This witness has not shown he had any connection with investments; it has not been shown he ever put a penny in a plant.

The Master: I will overrule it. The witness will answer the last question if it is read to him again.

A. No. 24507

Mr. O'Brien: I note an exception to your Honor's ruling.

Mr. Ransom: That is all.

Mr. Chambers: Would it not be better if we had his testimony written out.

The Master: No.

Mr. Chambers: We have to cross-examine now?

The Master: Yes.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Mr. Allison, how long have you been in the employ of the Consolidated Gas?

A. Well, I have been employed by them two or three times. This time since I got notice to come on the day before yesterday. I just had time to get here this morning.

Q. When else, or what other time were you employed by this company?

A. I was employed in the 44th Street gas case.

Q. When was that?

24509 Mr. Ransom: The condemnation proceeding.

Q. The condemnation case?

A. Yes, the condemnation case.

Q. Was that in 1913?

A. I do not know when.

Q. Two years ago?

A. I think so, yes.

Q. What other time?

A. I was employed in a case in which the Commission of the First District wished to impose a certain kind of accounting on the company. That was two or three years ago.

Q. Are you a regular in their employ now?

24510 A. No.

Q. Did you not prepare a pamphlet on depreciation for the Consolidated Gas Company?

A. That was in the accounting case that I spoke of.

Q. And they paid you for the preparation of that pamphlet?

A. They certainly did.

Q. When was that?

A. It was, I think, three years ago. It can be well established by the records of the Commission, I suppose.

Q. Have you, outside of the 44th Street plant, examined any of their property?

A. I have examined none of their property.

Q. None of it?

A. My business is to answer hypothetical questions.

Q. You do not know anything about this company's property?

A. I answer the hypothetical questions.

Q. Did you present the same theory in the condemnation proceeding of the 44th Street plant that you have just now? 24512

A. I think so. The arguments may not have been exactly the same, but the same general theory.

Q. The same theory?

A. Well, the same results, and I think the same theory.

Q. Have you ever testified in any other case outside of the 44th Street plant, in court?

A. For the Consolidated?

Q. For any company?

A. Oh, yes.

Q. You always appear, do you, for companies?

A. No. In court I have as it happens appeared for companies, but I do work for cities and have, as I 24513 say, on my list of clients the Cities of New Orleans, St. Louis and San Antonio.

Q. Your business now, though, is mostly testifying, is it not?

A. No, indeed. That is a very small part of my business. That is business I do not go after, do not seek. I do not want it.

Q. You say then that you would look at this plant the same as you would a tribe of people, as to the duration of its life?

A. Yes, any large plant with the great number of

units constantly being renewed is analagous to a tribe, as far as its life goes as a whole.

Q. You think it would last just as long perhaps as a tribe of people?

A. Well, we cannot tell. It goes beyond our ken as to how long it will last if it is renewed. Here is a plant that has been here and grown for maybe a hundred years. There is no reason to assume, unless it is something that cannot be foreseen, that it is going to be wiped out. If New York were to sink to the bottom of the ocean I would say the plant is

24515 going to go then, at that time.

Q. How often would you renew, say, the boilers used in the manufacturing of gas?

A. There are very few boilers used in the manufacturing of gas, but a boiler is rather an exceptional machine and it does after a while weaken, and on account of keeping up the pressure it will go. It is not subject to the same amount of repair and the constant repairing as the other machinery.

Q. When a boiler weakens and goes it is all gone, is it not?

A. Yes, but it is such an infinitesimal part of a gas plant like this, it is renewed like pocket money.

24516 Q. How long would you say a boiler was useful?

A. It would depend a good deal on its treatment. I have been a boiler inspector, and that is a pretty long question.

Q. Say twenty-five years, would you give it?

A. It depends on the pressure that is put upon it. It may last longer than that. There can be no definite life put on a boiler unless there are city rules.

Q. As to water gas sets, are you familiar with the water gas sets?

A. Yes. I do not think there is much wear and tear about them. There are certain elements which keep

disappearing and they are put back—checker brick and things of that sort.

Q. Do they not have to be removed and replaced every once in a while?

A. It is very seldom. Unless there should come some great convulsion, you might say, in operating costs, which would make them put in the coal plant.

Q. Take a holder.

A. Why, if a holder is properly preserved, it won't go out until it becomes antiquated.

Q. What do you mean by "properly preserved"?

A. Of course, you could let a hole if you put in the 24518
wrong kind of water, and that sort of thing. You might make holes in it and that sort of thing, but the holder under the care of sane people is just going to go out from inadequacy and not on account of its being worn out or decayed.

Q. It would go out if it gets any rust holes through it, would it not?

A. If it could not be patched.

Q. What would you say if a holder is pitted?

A. It depends on how much it was pitted, whether it would pay to keep part of it and repair it.

Q. Would you say that that was good care and management, to allow a holder to become pitted? 24519

A. Well, it would depend very much on—I could not criticise that unless I knew all the circumstances.

Q. If it was pitted at all would it show carelessness?

A. I cannot say. There might be circumstances in which it would not.

Q. Could you so maintain a holder so that it would not be pitted?

A. So maintained that it would not be pitted so as to make it useless.

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Q. Would this pitting go on and be continuous after it once sets in?

A. Not necessarily.

Q. Is it not quite likely to?

A. Well, in the original plant that I was a youngster in and managed that was a good many years ago and I think they have the same holder. A holder does not necessarily have to go out on account of inadequacy either.

Q. What is that which sets in when it becomes pitted? Rust I know, but what—

24521 A. (Interposing.) It takes place as a rule under scale, and pitting in boilers is one of the mooted questions of mechanical engineering, as to just what the cause of it is. Some people say theoretically that it is a small current like a plating current in a plating works that take place, on account of the difference in metal, the iron and the scale—not the scale, but sort of a gloss on the boilers. Others have other explanations of it. Well, we know that it takes place, that is all.

Q. You do not want to maintain that a holder will last indefinitely, do you?

A. I do, indefinitely unless it becomes obsolete. If
24522 it is well taken care of. I won't say they won't have to put a patch on it once in a while or anything like that, but that holder will last. That holder could actually be renewed by patches like street cars. We know of street cars that have been in service thirty years, the same identical car in one way, and in another way it is an entirely different car. But there is that part replaced and that part replaced. I have them on my record in St. Louis, and know the cars. They are just replaced, piece replacements, and yet the identity of the car has not been lost. That might happen in a holder.

Q. New wheels, you mean?

A. New wheels, new trucks, everything in thirty years.

Q. Finally it emerges as a new car?

A. It emerges as a new car gradually.

The Master: That is what the witness claims here.

The Witness: It is just what takes place in the plant as a whole.

Q. How about an engine; how long would you say the life of that would be?

A. Why, you could not say. It would depend on 24524
the use of the engine. I know of a set of engines, old Corliss engines, that are now over thirty years old, that are better engines than they were when they were put in. And not only that, they have not even become obsolete, because they are so placed in respect to the water supply that they cannot use a turbine there. If those engines thirty years old were to be taken out, or if there was a fire that burned them up, they would have to put back engines of the same kind. The Corliss engine has not changed much in design in the last thirty years.

Q. You do not think they change much?

A. No, you bore out the cylinders, or you can have 24525
them recast and put on, and you would have the same engine.

Q. Take the boiler that I referred to a minute ago. Do you say it has a value right up to the time it is removed equal to its cost?

A. What kind of value? Do you mean would it sell?

Q. Value for rate making purposes?

A. Why, it represents the amount of capital that was put into it or the amount of capital to replace it.

Q. That is not what I asked you. A. The amount is ready to go into it when it gives out. There is that much capital in the utility all the time.

Q. Can you answer my question in the way I put it?

A. Read it to me and I will try to.

Q. Take the boiler that I referred to a minute ago. Do you say it has a value right up to the time it is removed equal to its cost—a value for rate making purposes?

A. It might have a value very much greater than
24527 its cost. If boilers had gone up.

Q. Never less?

A. Yes, if they had gone down it might have less for rate making purposes.

Q. It depends on the market price new, then?

A. Very much. It represents a body of capital, what it could be replaced for if it is taken out.

Q. Or it would have the value equal to the cost of a new boiler?

A. Just as the utility as a whole. If the investors—

Q. (Interposing.) No, can you answer that, if it would have the value equal to the cost of a new boiler?

The Master: No, the witness is quite correct.
24528 I was wondering how long he was going to follow you without calling attention to the very great difference between one piece, one item of a plant, and the plant as a whole. It is perfectly obvious that that holder or that machine, or that part that is gone, is gone and worthless, and requires replacement. But the witness's testimony is that when that is replaced the plant as a whole is as good as new again.

Q. Does it not decrease in value from the time it is put in until it is taken out?

The Master: What is that? The holder itself?

Mr. Chambers: The boiler.

The Master: The boiler itself as a separate piece.

A. Why, it does not as a part of that plant. If you are going to sell that boiler as second-hand stuff, why, its value decreases immediately you put it in, unless the market changes.

By the Master:

Q. If the boiler is worn out—

A. Why, of course, as a boiler—

Q. (Continuing.)—it is of no value to the plant, 24530
is it?

A. No, and it ought to be replaced right away.

Q. Do I understand your testimony to be that that particular boiler is valueless, the money expended in it has gone?

A. Yes.

Q. But when you replace it the plant as a whole then is as good as new?

A. Right, Judge; you have it exactly.

The Master: I do not know that I agree with you to the extent of your testimony, but I think I understand plain English.

By Mr. Chambers: 24531

Q. Does not that boiler as a boiler decrease in value from the time it is put in until it is taken out?

A. That depends on what kind of value you mean. You mean exchange value?

Q. For rate making purposes.

A. No, because it does not decrease the great body of capital in the utility. The boiler is there, the money to replace it is ready at any time. The great body of capital in the utility is not diminished by the age of that boiler.

The Master: I do not think you get the question. I think Mr. Chambers presupposes that the boiler has become useless.

The Witness: Why, if the boiler has become useless and must be replaced, it is taken out and charged off the books.

Q. Where are you going to get the money to replace it with?

A. You get it out of the rates.

Q. What is that?

A. You get it out of the rates.

24533 Q. Not provides any fund to take care of that?

A. No, not necessarily. There may be a small balance there; there may be a fund or a deficit. The company has to provide the money. If the company has not any fund it will certainly replace the boiler whether it has it or not, or the whole plant will have to go.

The Master: Or it may have to borrow the money?

The Witness: Or it may have to borrow the money. It is not dependent on a fund. If it was dependent on a fund to make replacements half the utilities in the United States would go

24534 out of existence.

Q. You say a boiler does not decrease in value from the time it is put in until it is taken out?

A. I say it does not decrease the value of the utility.

Q. I am talking about the boiler.

A. Then I say if you are speaking of selling the boiler as a second-hand thing; yes, sir; because it has become second hand; but that boiler as long as it will perform its functions—

The Master: No, but he presupposes it is not performing any.

Mr. Chambers: No, I do not.

The Witness: No, I know what he means.

The Master: You do not?

Mr. Chambers: No.

The Witness: No, as long as it performs its functions as a part of the utility as a whole it represents its cost at least, or its reproduction cost, as it is part of the capital.

Q. I would like to know if it is not decreased in value as a separate entity?

A. I can answer that question if you will give me a definition of value.

Q. You don't know then— 24536

A. Yes, I know the definition of value, but I don't know what you have in mind as a definition of value.

Q. I want to find out what you consider?

A. I say its value as a part of the utility is the same.

Q. Disregard it as part of the utility?

A. Disregarded as part of the utility its value is what it will sell for.

Q. And that is all?

A. That is all; but on that basis your public utility would be worth only the scrap value of all its parts.

Q. When you are testifying here you have in mind testimony for rate making purposes, have you? 24537

A. Yes.

Q. Have you ever testified in a confiscation case?

A. Oh, yes, in the 44th Street case.

The Master: That was a condemnation.

Mr. Ransom: That is the same thing sometimes.

The Master: Mr. Chambers tries to draw a distinction between an application to fix a rate, and an application of this kind which complains that a rate fixed is confiscatory.

Mr. Chambers: They are no more alike than night and day.

The Master: Don't let us get into an argument on that.

Q. Mr. Allison, do you know the distinction between a rate case and a confiscation case?

A. Yes, and I have just gotten through testifying before the United States Court in a confiscation case.

Q. What case was that?

A. In the case of the East St. Louis & Suburban Railway Company, in which we got an injunction
24539 against the Commission of Illinois, or all the county officers and state officers and prosecuting attorneys, against enforcing the two-cent rate law. The judge gave us a verdict without going off the bench.

Q. You appeared for the company there?

A. I did.

Q. In the Federal Court?

A. The Federal Court.

Q. Recently?

A. Yes, within the last three months.

Q. That has not been reversed yet on appeal?

A. No.

Q. It may be though?

24540 A. Well, I think everybody is satisfied.

Q. The company is?

A. Well, no, because the traffic won't bear enough rate to make their property pay.

Q. That is what you maintained when you were on the stand?

A. No, I simply put in valuation.

Q. The other side—I don't suppose they had anything to say?

A. Not much.

Q. Nobody maintained that the rate was all right, there was no defense?

A. Everybody knew it was not all right.

Q. It was a one-sided affair?

A. No, the lawyers on the other side made talks.

Mr. Ransom: That case is like this one then.

Q. Is there any other case of that kind that you have testified in?

A. That is all I recall at the present time, confiscation case.

Q. What did you do, value the property of the railroad?

A. Yes.

Q. Of today?

A. Yes. 24542

Q. You presented the same theory there that you have presented here?

A. Yes, exactly.

Q. There wasn't anything said there about the life of rails I suppose, how long they would last?

A. Well, I think there was.

Q. What was the useful life of a steel rail there?

A. The useful life of a steel rail depends on its use. You can't state what its life will be, it depends on the use.

Q. What was the testimony in that case?

A. There was none.

Q. Not pro or con? 24543

A. No, it was merely a question of whether that had anything to do with the rate basis.

Q. How about the engines, was there testimony there to the effect that their life was indefinite?

A. No, no, I don't remember that.

Q. Can you tell me how many cases you have testified in in which you have presented this theory?

A. Theory about depreciation?

Q. This theory today, and give me the names of them?

A. When I was a commissioner I found out that

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that was wrong. I was making the cases myself, and our commission determined that deductions for theoretical depreciation were wrong.

Q. To save time I would like to have you tell me—

A. How many cases?

Q. Yes.

The Master: How does that help us, Mr. Chambers, how many cases he has said the same thing in?

Mr. O'Brien: To get his record.

24544 Mr. Chambers: I think it is proper cross-examination to show if he ever did.

A. I can go back and get them, but I have testified to the same theory of depreciation that I have testified to here today, in every case that I have had where there was an opportunity to testify to.

Q. You have told me one. Are there any others?

A. Yes, there are a lot of them.

The Master: We have had enough of that Let us get to something else.

Mr. Chambers: Exception.

Q. Can you tell me any of those cases where the Court adopted your theory?

24546 The Master: I don't care anything about that.

Q. Outside of the one you have presented here?

The Master: Question not allowed.

Mr. Chambers: Your Honor may not want it, but we would like it.

The Master: No, I don't care what you would like as a pure matter of interest.

Mr. Chambers: Somebody else may pass on this case.

The Master: I don't think that the court that reviews me, or the United States Supreme Court, is going to find any usefulness in knowing what courts adopted his theory.

Mr. Chambers: I suggest they might, and I take an exception. You never know what the Appellate Court may want to know.

The Master: It is very certain they don't want to know that. Objection sustained.

Mr. Chambers: You can make a better guess than I can.

The Master: Yes, I think I can.

Mr. Chambers: I am not so sure.

Q. Now, you spoke of buying some stock and paying say 21 cents for it, and then the market having gone up, and its being worth $1.20. 24548

The Master: He said $1.50. I was listening closely, and I was wondering what stock it was.

The Witness: I could name the stock.

Q. Well, that stock went up after it was bought. You say that your investment in it would be 21 cents, or 24 cents?

A. That is what it was at the time I bought it.

Q. And it goes up to $1.50, you say that its value is the market value of the stock that it had gone up to?

A. The value certainly is, the true value is $1.50.

The Master: Is the investment $1.50?

The Witness: My investment in there is $1.50, 24549 because I can take that out and buy a necktie if I wanted to. That is my investment.

Q. You think that is your investment, what it has gone up to?

Q. Yes, I can get it out, can get the money.

Q. If you buy an automobile for $5,000, and automobiles go up, and that automobile becomes worth $10,000 in the market, you think your investment in that automobile is $10,000 instead of $5,000?

A. If I can get it out, yes.

Q. That is your investment?

A. Yes, if I can get it out.

Q. And you think if a gas company pays a million dollars for its real property and plant, and the value of the real property goes up so that it becomes two million dollars, you think that the gas company's investment is two million dollars?

A. That is their present investment, yes.

Q. Two million dollars, instead of one million?

A. Yes, the present investment.

By the Master:

Q. You do not go so far as to claim, Mr. Allison, assuming that six per cent was considered a fair re-
24551 turn on the original cost, and the property that cost a million dollars has gone up so that the investment is two million, theoretically as you put it, that it would be entitled to six per cent on the two million dollars, in a rate case?

A. If you are going to get the present value of the property and use that as your rate base, the present value is what a willing buyer would give to a willing seller, eliminating returns.

Q. But we are talking about a rate case, where the public is paying for the merchandise they get. Now, the gas company pays a million dollars to build a plant. You have already said that in the rate must
24552 be included something for replacements and repairs, so that your rate base on your million dollars has paid for the keeping of that plant in a condition in which it was when new all the time, in theory?

A. And keeping it up to the times.

Q. Keeping it up to the times, so that the consumer is paying for that all the time?

A. Oh, no, he doesn't pay for any additional investment.

Q. No, but he is paying in the rate that he is paying, part of that money he is paying to the utility is to keep its plant up to date, isn't that so?

A. The consumer only pays enough to replace the money that goes out from the stuff that is used up. If there is any additional money put in on account of the higher cost of anything the consumer does not pay that.

Q. But I am asking about keeping the plant up to a condition where it is as good as new. Is it your contention that because that plant has become more valuable that therefore the rate should be increased?

A. Yes, if the basis of present value is taken. If you take present value you cannot escape the fact that the present value is represented—you must eliminate 24554
returns—the present value with the return is what the plant will sell for. The present value without return is what it can be duplicated for.

Q. What I am trying to get at is this: Here we have a gas company that supplies gas to the people in the city, and it builds a plant which costs a million dollars, and a rate is fixed with the gas company and everybody else agrees it is fair. We will assume that it is based upon a return of six per cent upon the million dollars. Now, that rate, I think you and I agree, includes something which was necessary for repairs and replacements to keep the plant up. Now, ten years after the plant is built, and the rate is just the 24555
same, when it costs just the same to operate it, I am leaving aside all operating items—and it is still returning six per cent on the million dollars, but only three per cent on two million dollars, because the plant now is worth two million dollars, would you say that the rate ought to be double?

A. I would say that is true if you are going to take present value as the basis of return.

By Mr. Chambers:

Q. Mr. Allison, what was the name of the railroad, that case you testified in?

A. I have testified in several.

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Q. The snap judgment, where everybody agreed they should have a raise?

A. I didn't say snap judgment at all.

Q. Well, what was the name of the railroad?

A. East St. Louis & Suburban Railway.

Q. Suppose that the East St. Louis & Suburban Railroad had cost that company in the beginning of their career twenty million dollars for all of their property, right of way, everything, engines, ticket offices, buildings, everything, ten years ago, and their patrons on the road, the public, had paid a rate which
24557 gave that railroad a return of six per cent on their twenty million; also on top of the six per cent was enough out of the rate to maintain that railroad and keep it in first-class condition, right up to that "proper and adequately maintained" if yours, and now in spite of that, the road is worth forty million dollars because of the enhancing in value of the real property and other property of the company, would you now say that the public should pay a rate—

The Master: Question not allowed.

Mr. Chambers: I have not finished.

The Master: It is merely repetition of what I asked. What is the use of wasting time?

24558 Mr. Chambers: I wanted to see what he would say on this. Let me finish it, won't you?

The Master: No.

Mr. Chambers: Exception. I don't think I was asking just what you did.

The Master: You could not possibly reach any other conclusion, as far as you have gone.

Mr. Chambers: I was going to ask him what rate in addition to the six per cent the public should, in his judgment, pay.

The Master: Now, you have on the record what you were going to ask. Question not allowed.

Mr. Chambers: And some more. I will not disclose it all.

The Master: If you have anything more that you want to disclose, disclose it. This insinuation and intimation every once in a while, when I stop a line of questions, that you have something that you really think is useful, and you don't tell me what it is, doesn't get you anywhere.

Mr. Chambers: I was going to ask what in that case he would consider the investment of the company in that railroad. 24560

The Master: That is already covered. He has said over and over again it is forty million dollars, because that is the value of the road, what it would cost to reproduce it.

Mr. Chambers: Your Honor, I was going to ask if he thought it should be six per cent on the forty million dollars.

The Master: That is all covered.

Mr. Chambers: I was explaining what I was going to ask him.

The Master: You have explained.

Mr. Chambers: Exception.

Q. Suppose this Consolidated Gas Company had maintained a depreciation reserve, and had put that depreciation reserve in additions or betterments to its plant, would you say then that the consumer should pay a rate which would give a return on the original cost, book cost of the plant, plus the additions and betterments? 24561

Mr. Ransom: Objected to. There is absolutely no indication in this case that this company ever maintained a depreciation reserve.

The Master: No, but the defendants may prove it in their case.

Mr. Ransom: But it is not the fact.

The Master: I don't know whether it is or not.

Mr. Ransom: The fact is that what the company did has been fully spread on the record.

The Master: But the defendants may be able to show differently. I will allow the question.

Mr. Ransom: Exception.

A. What is the question?

Q. Supposing this Consolidated Gas Company had maintained a depreciation reserve and had put that de-
24563 preciation reserve in additions or betterments to its plant, would you say then that the consumer should pay a rate which would give a return on the original cost, book cost of the plant, plus the additions and betterments?

A. You mean would I say that their capital entitled to return should have deducted from it the amount of this fund? Is that what you mean?

Q. No.

A. It would depend entirely on the circumstances of the creation of that fund. Of course, a fund created simply to meet an arbitrary deduction in valuation is a useless fund. All you have to do is not take
24564 off the deduction and you don't have to have the fund, and the consumer don't have to be charged with it, and you don't get mixed up with all this business of accounting, and all these arguments. If that fund had been created under the rulings of a commission, and had been specifically charged to the consumer over and above the rate, and they had compelled the company to do this, to over charge their consumers and to create this useless fund, and the consumer had actually paid for it, that would be one thing. Another thing is that where they assumed that the company should have in the past accumulated this useless

fund, I should say no, because in the beninning of utilities they knew nothing about such funds. The fund on its face is useless unless you make the arbitrary deductions. It does not have to be used for reimbursing the investor. It would depend entirely on that. Another thing is, in the past the commissions had no power to regulate the returns made by a company, they could simply make rates, and whatever is made under those rates is the legally acquired property of the company, it might be less or it might be more; but there is no commission in the United States, except I believe in one case in Massachusetts, 24566
that has any power to regulate any rate of return. They can simply say that the rate is to be so much. They try to calculate it so that it will bring a certain rate of return, but if they don't calculate rightly the company gets the best or the worst of it, but whatever they make is their legally acquired property, and it is hardly to be conceived that a body of men should be given the power to go back into the past and take away legally acquired property because they think the property has made too much money.

Mr. O'Brien: I move to strike out the answer as not being responsive, and as giving us conclusions of law contrary to the rulings of the United 24567
States Supreme Court.

The Master: Do I understand your answer to be in short, Mr. Allison, that on your theory the company is entitled to a return on that additional property purchased out of this reserve fund?

The Witness: If the fund has been made under rates where there has been no exact specification or agreement of the company that this is a supercharge on the consumer not to be used by them. If they agree to that, of course it would be a supercharge.

Q. Suppose a company like this gas company paid $50,000 for a piece of real property used and useful in its gas business, and that property was abandoned as used and useful in the gas business, thereupon the company sold that piece of real property for $100,000, double its book value, where would you put the $50,000?

Mr. Ransom: That is a matter that has been decided specifically by the Court of Appeals of this state.

Q. Would you give the consumers the benefit of
24569 it?

A. The question puzzles me a little bit, but I should say no, it was the company's property; it is not the consumers property.

Q. You would give it to the stockholders to divide it up in dividends?

A. It was their property, it wasn't anybody else's property. If it had gone down they would have had to stand the loss.

Q. If it had gone down where would you put the loss?

A. You would probably charge it out of capital.

Q. You would charge it out of capital, so the
24570 consumers would stand it?

A. I would not state what would be done on the books, I don't know what the bookkeepers would do.

Q. If there is a loss, you charge the consumers with it, take it out of capital; if there is a profit the stockholders will divy up?

Mr. Ransom: Charge the consumers with it by taking it out of capital?

A. The consumers must always keep money going into the utility, always be so treated in their rates as to keep the capital intact, or the capital will not go into utilities, or will go in on such a high rate that the consumer himself will suffer for it.

Q. Can you tell me in so many words what they do with the loss?

A. I know that that is the company's property, and if they sell it—

Q. If there is a loss?

A. Of course you are reverting now to the rather radical doctrine of the unearned increment, what they would do with the unearned increment. I do not believe in the single tax—

Mr. O'Brien: I will ask that the last remark of the witness be stricken from the record.

The Master: No, I will let it stand. 24572

Mr. O'Brien: Exception.

Q. Take the same piece of property with a building on it, and it is retired, the land sells for $50,000 more than it cost, and the building sells for $10,000 less than the company put in it. Where would you put the loss there?

A. The question is new to me, and I have often answered these questions, and after I thought it over found I was not right. I would like to think about that question. I have never had it asked me before.

Q. In all these cases nobody has seen fit to ask you that before?

A. No. 24573

Q. You cannot say then what you would do with it?

A. Not now; I could tomorrow morning.

Mr. Ransom: The Kings County Lighting case decided the question in this state, a decision of the Court of Appeals.

Q. When a piece of property goes out of use physically shouldn't it that moment be charged out of capital?

Mr. Ransom: I object to the question. They are now examining him upon a matter in the

field of accountancy as to which the rulings of the commission, as passed on by the Courts of the state, are controlling with respect to a corporation subject to the regulatory power of this state. This witness was not asked these questions of what the uniform system of accounts in this state requires.

The Master: I will not sustain it on that ground. I am wondering whether I will sustain it on any other ground. Here is the picture: Mr. Allison is called here to testify to a theory of depreciation. He has testified in substance that a plant kept up by repairs and replacements is as good as new, and he goes one step further and says that property that has increased in value represents an increased investment, a sort of unearned increment. Now, what I have been trying to make up my mind about while several questions have been asked is, how this question of accounting bears on this testimony of the witness. I have a feeling that it does somewhere, but just how it does I don't know.

Mr. Ransom: It is not cross-examination at all.

The Master: If it bears on it at all it is cross-examination. I have a feeling somewhere that I can't locate that it has some bearing on it.

Mr. Chambers: I don't think your Honor ought to strain yourself to find a ground for ruling it out.

The Master: No, I am trying to strain myself to let it in. I have tried to indicate to you that I feel that it should go in.

Mr. Ransom: You can cross-examine with respect to the requirements of the uniform system of accounts—

The Master: I will tell you, one of the things that has been in my mind. You say that the reproduction cost of the property is the investment. Well, what becomes of the profit that is earned, what has become of the losses that have been sustained, and how is that made up when you talk about the investment at a particular time? Counsel for the state does not ever seem to be willing to help the Master in any of these situations, and I have been trying to work it out myself.

The Witness: I think I can answer the ques- 24578
tion.

The Master: Suppose you do.

Mr. O'Brien: I am going to object to this volunteer oration of the witness, your Honor.

The Master: When are you going to do it?

Mr. O'Brien: Now.

The Master: Then you do object?

Mr. O'Brien: I do object.

The Master: Objection overruled.

Mr. O'Brien: I take an exception to your Honor's ruling.

The Master: I don't know what you are objecting about. I have overruled Judge Ransom's 24579
objection, and I am allowing the witness to tell Mr. Chambers what he wants.

Mr. O'Brien: I am objecting to the volunteer testimony of the eager witness.

The Master: Go on.

Mr. Ransom: Exception.

A. The question interests me very much. If we are to take reproduction cost as the measure of present value of property sold at a loss, the loss would be stood by the company.

Q. That is not the question.

The Master: Take Mr. Chambers' illustration. Here is a piece of land with a building on it. The land actually shows a profit of $50,000 on the sale, and the building shows a loss of $10,000 on the sale. Now, we have here the invested capital at the beginning of the year, including this property. At the end of the year when that property is out, what is the invested capital? Is it $40,000, more or less, or is it $10,000 less than it was, or what is it?

The Witness: Do you want me to answer it?

24581 The Master: Yes.

The Witness: An accounting system which would get the present value of the property would have to be like the accounting system of a grocery store where there is a large stock of goods, and which is re-inventoried and re-priced every year. That kind of accounting would give you the present value of the utility on reproduction. However that is a cumbersome method for a utility, so that the books are not kept that way, and the reason that we have to have valuations made is because it is impossible to keep books in the same simple way.

24582 Q. Either you don't understand my question or you have not answered it at all. The question is this: If a piece of plant or piece of property of the company therefore used in the gas business physically ceases to be used on say the first day of October, 1919, on that day you would retire it from the capital, wouldn't you?

Mr. Ransom: I object to the question. That is a matter in which a company is controlled by the requirements of the accounting system imposed by law. That is not cross-examination of this witness on any matter concerning which he

was interrogated on the direct. It is cross-examination as to what the uniform system of accounts of this or some other state ought to provide.

The Master: Well, that is a repetition of the objection you made a minute ago. I am as much puzzled as I was before. If the witness can answer the question I am going to let him answer it.

Mr. Ransom: Exception.

The Witness: Well, it would depend on a number of things. Sometimes property physically ceases to be used, but still is valuable, and is held as a stand-by. 24584

Q. I mean assuming it is all gone?

A. Assuming that it was all gone, it would be charged out of the books, but before it was charged out there would be a replacement made of it, so that the capital in the utility would not be diminished at all. If you have an engine, for instance, a pumping engine, before you put that pump out of existence, you have got to have another one.

Q. When you charge it out, suppose you did not need anything else in its place?

A. You would charge it off, it would not be capital in the service. 24585

Q. You would charge it off on that day at the book value?

A. Charge it out at whatever you charged it in at.

Q. At the book cost?

A. Whatever you had it charged on the books at, you would charge it off at.

Q. Yes, on that day. That is all.

CROSS-EXAMINATION BY MR. O'BRIEN:

Q. Mr. Allison, you graduated from Harvard?

A. Yes.

Q. What school?

A. I took a degree of A. B., in the college.

Q. You were not in the scientific school there?

A. No. At that time they had what was known—a lot of courses, you could take any one you wanted in the college.

Q. It was elective in your day?

A. Yes, that is the word I was searching for.

24587 Q. And you elected the easy studies of what?

A. Mathematics, physics, political economy, banking and finance, French, geology. What is the use of going into this thing?

Q. You did study geology?

A. Yes.

The Master: Why did you?

The Witness: Well, now, I can't tell what motives actuated me in something more years ago than I want to recall.

Q. Then you were interested in "rocks" in the early days of your career?

The Master: The question is not allowed.

24588 Q. You went back to your father's shop then?

The Master: Not allowed.

Q. The factory?

The Master: The question is not allowed. I am not going to have you go all over this witness' history again. He has told us once what his history was. I don't want to hear that again.

Mr. O'Brien: I am going to ask him a few salient questions about his experience, to find out why he should come here and be another arch priest of immortality.

The Master: Make them salient and you will get them through, otherwise you won't.

Q. The Public Service Commission of St. Louis is not restricted to engineers, is it? I mean the make-up of the Commission, by law.

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it. It bears upon Mr. Allison's qualifications. If they can have shoemakers on that commission he might be a shoemaker.

Mr. Ransom: There is no reason why they cannot have engineers. 24590

Mr. O'Brien: We will find out if they have "crackers," and all the others, politicians.

The Master: Is there any qualification?

The Witness: The qualifications of the Public Service Commission of St. Louis—it has been out of existence for five years and has been superseded by the State Commission.

The Master: When you were on it?

The Witness: When I was on, there was no qualification. I was the engineer member of the commission. The Mayor thought that there ought to be an engineer on the commission, and I was the engineer. 24591

The Master: And he thought you were an engineer?

The Witness: I was an engineer in the employ of the city at that time.

Q. Who was the Mayor who appointed you, Mr. Allison?

A. Mayor Rollo Wells.

Q. Do you know Mr. Walsh who is head of the United Railway?

A. Mr. Walsh is not the head of the United Railway.

Q. You know who I mean?

A. There is quite a family of Walshes there, and I know a number of them. There was a Mr. Walsh who was president of the Terminal Company.

Q. Yes. Do you know him?

A. Yes, I know his sons.

The Master: How is that important, whether he knows Mr. Walsh or his sons, or his grandmother, or his nephews or his nieces.

Mr. O'Brien: I do not intend to choke this record by galloping through it like Judge Ransom. I have got a few things to ask this witness that I think are very salient.

24593

The Master: Well, you better get on horseback or automobile or something very quickly.

Q. You are the arbitrator selected by the city railway in the Buffalo matter, the International Street Railway Company?

The Master: How did you guess that?

Mr. O'Brien: What is that?

The Master: How did you guess that?

Mr. O'Brien: How did I guess it?

The Master: Yes, how did you know that?

Mr. O'Brien: Why does your Honor ask me that question?

24594

The Master: Because I want to know.

Mr. O'Brien: I am not on the witness stand here.

The Master: I know, but how did you know that, that he is the arbitrator?

Mr. O'Brien: I knew it the same way your Honor would know it if you followed the record.

The Master: That question is not allowed I am not going to permit counsel to ask a question, "You were the arbitrator," when the witness has already said he was the arbitrator.

Mr. O'Brien: That is all right, your Honor, but there is no use attempting to reduce my questions to an absurdity, because I am going to make my own record in my own way, respecting at all times the dignity of this Court.

The Master: Go ahead. I am telling you now—

Mr. O'Brien: I asked that question just to recall his mind to that proposition, with a view of putting another matter to him.

The Master: Put the other matter to him. I won't permit time to be wasted in that way. 24596

Mr. O'Brien: We have wasted an afternoon listening to his talk on this stand, and over my objection you have allowed him to preach into this record.

The Master: Next question.

Q. What was the question involved in the matter in which you acted as arbitrator for the International Street Railway Company?

A. The value for rate making.

Q. Did you appraise the plant and property of the International Railway Company?

A. We took an agreed cost of physical properties and make the appraisal from that. 24597

Q. Then your time since 1913 has been devoted to testifying on depreciation and acting in the capacities of arbitrator?

The Master: Not allowed.

Mr. O'Brien: Exception.

Q. Is there any gas plant that you might say, Mr. Allison, that you are acquainted with, so far as its physical life extends over an extended period?

A. Yes, sir, I am quite well acquainted with the Laclede Gas plant, one of the largest in the country.

The Master: Laclede?

The Witness: Laclede gas plant, which supplies St. Louis. I might say that I had some acquaintance with the Kings County plant, being directly interested in it. I might say that I am acquainted with the Johnstown, Pennsylvania, plant. That is, I had some one of my assistants do most of that.

Q. Would you say that the Kings County plant will live on forever, if it is patched up and repaired?

A. If properly renewed, it will. There will be a

24599 plant there.

Q. Well, do you make an exception for the manner in which it has been maintained since it was established?

A. What do you mean, been maintained since it was established?

Q. I mean in your statement that it will live on forever, are you assuming that it has been properly maintained in the past, or not?

A. I am.

Q. You put that in as a condition to your belief that it will remain forever?

A. Yes.

24600 Q. Did you ever see the water mains that supply the City of Atlantic City?

A. Atlantic City?

Q. Yes. Have you ever been to Atlantic City?

A. No, never have been there.

Q. Did you ever see any extensive pipe lines of any water company, or a pipe line company, that were exposed to the elements? In other words, that were above ground?

A. Above ground?

Q. Yes.

Q. Pipes, water pipes above ground?

Q. Yes.

A. Permanently kept above ground?

Q. Yes.

A. Well, I do not understand any water works engineers doing that sort of thing. I can say that I have not inspected any water pipes in water works permanently installed above ground.

Q. Well, assume that they are in some instances permanently installed above ground?

A. Yes.

Q. As at Atlantic City, would you say that those pipes treated in anyway that you suggest, might live 24602
on forever?

A. I have not seen them. I do not know. There may be salt water conditions there—

The Master: I won't allow the question, because it assumes that the pipes in Atlantic City are exposed in the way described, and I won't permit it.

Mr. O'Brien: Well, Judge Ransom put to him a number of questions asking him to assume in regard to this particular plant.

The Master: But you said—you not only took an assumed case, assumed pipes over ground, that part of it is all right, but you say, "as they 24603
actually are in Atlantic City." You technically testified that they are, and I won't permit it. I will let you take the assumption.

Mr. O'Brien: That is not very important for the purposes of my question, your Honor. You need not be alarmed.

The Master: You seem to think it very important.

Mr. O'Brien: I can exclude Atlantic City in an actual case, and ask the witness whether a system of mains, water mains, installed above

ground, would, if treated in any way he might suggest, remain forever.

The Master: I won't allow the question, because the witness said he never heard of such a thing.

Mr. O'Brien: I will have to note an exception to your Honor's ruling. May I not proceed to ask the witness questions that assume things, even though they may be contrary to his belief as to what the actualities may be?

The Master: I will let you assume that pipes
24605 out in the open air—what would happen to them, if that is what you want to ask him.

Mr. O'Brien: That is the very question, your Honor.

The Master: A piece of pipe in the open air, will it rust and spoil and deteriorate?

The Witness: It will rust, but it will not necessarily spoil and deteriorate.

Q. Well, can you conceive of any treatment to a system of mains, conducting water over ground that will give them life forever?

A. I do not only conceive that over ground, if properly protected, but as a matter of fact under
24606 ground, a pipe only disappears sporadically where there are certain soil conditions.

Q. Just keep above ground for a minute, will you, and answer my question, Mr. Allison? I asked you if you could give it any kind of treatment, chemically or in any other way, that would give it life forever?

A. Unless there are some exceptional conditions of salt water or something like that—even then if you want to spend enough to do it, you can protect the pipes.

Q. If you want to spend enough money to do it?

A. Yes. Above water. You see, this assumption—

Q. Never mind about that?

A. (Continuing.) This assumption of water pipe above ground is absolutely unusual.

Mr. Ransom: Don't be afraid of his answers. Let him answer.

The Witness: You are assuming the very unusual condition of a pipe system laid above ground, aren't you?

Q. I am assuming something that is a physical part of a plant above ground, exposed to the elements?

A. Yes.

Q. Now, do you conceive that there is such a thing 24608
as decay under such conditions?

A. Exposed to the elements?

Q. Yes.

A. Mains exposed or covering of the pipe, or the pipe?

Q. What were you saying about the mains that you say will cause it to deteriorate?

A. Well, what will cause mains to deteriorate?

Q. Yes.

A. Soil conditions where they set up an electrolysis, principally.

Q. Eliminating electrolysis, could you conceive of any method by which you could treat that system of 24609
mains to give it life eternal, such as you suggested as to other plants?

A. You assume that it is above ground?

Q. Yes.

A. My information is about pipe under ground.

Q. You haven't any as to pipe above ground?

A. As to what a pipe would do above ground I haven't any information, I can merely make a guess by virtue of knowing something about the nature of iron, etc.

Q. Then you pass that over, you do not feel that you can answer that question?

A. Why, yes, I can answer it. I should say if you want to spend enough money on it you can protect that pipe.

Q. Well, after all, isn't that back of your theory, that if you spend enough money on it maintaining it, you can give it life eternal?

A. I should say you would have to spend enough money to keep it up.

Q. Gas holders are exposed to the elements, too,
24611 aren't they?

A. Yes, they are.

Q. Maybe electrolysis in certain cases?

A. I don't know about that.

Q. Take a gas holder 3,000,000 feet capacity, that has settled eighteen inches out of level, how would you repair it?

A. Level it up, that is all I can say about it. I would make it level.

Q. Well, could you make it level?

A. I should think so. Of course—is it in a pit, or is it in a case above ground?

Q. I am talking about an ordinary usual holder?

A. They are both ordinary.

24612 Q. Gas holder?

A. They are both ordinary.

Q. Three million feet holder?

A. Yes.

Q. How would you level it up?

A. Well, I do not know how I would do it until I could see it. It would depend a good deal on what the surroundings were.

Q. You can give us some general principles of engineering which you would use to put that on the level, can't you?

A. No, not until I could see it. I would not say anything about it.

Q. Well, assume a Bartlett & Hayward holder of three million feet that settled 18 inches out of level, how would you level it?

A. What do you mean by eighteen inches out of level?

Q. I am telling you now, putting my question to you, and don't try to evade it by asking me a question?

A. I am not trying to evade it. If I did not know, I would be glad to tell you. 24614

Q. I ask you to tell me how you could repair it so that it would live on forever?

A. I cannot tell you just how I would do it, but that thing could be done by engineers who had seen and studied the problem.

The Master: I will stop that line of examination for the reason this witness has not testified that every piece of machinery or every unit in the plant will live forever. He has not so testified.

Mr. O'Brien: He has testified, as I recall the testimony, your Honor, it did not jibe altogether, his testimony, but as I recall it he said that the 24615 parts where the wear and tear was would be put in by a wise man of such a kind that they could be taken out and replaced. Now, I am taking holders as we find them as a part of a plant.

The Master: Yes, and assume that you take and tear the whole holder down and put up a new holder, you then have got a new plant, on his theory. That is all there is to it. I suppose you can fix it and can plumb it, but suppose you can't and have to tear it all down?

Mr. O'Brien: I am taking that holder just as he takes a cylinder as part of a machine.

The Master: I won't allow the question, it is not useful.

Q. Did you ever hear of holders collapsing?

A. I cannot recall a case.

Q. Never heard of a case. Have you ever been through any gas plants in Boston?

A. No.

Q. In Providence?

A. No.

Q. In Worcester?

A. No.

24617 Q. In Chicago?

A. No.

Q. In St. Louis?

A. Yes.

Q. Outside of the Laclede?

A. There isn't any other there.

Q. Have you been in Detroit in any of the gas plants in Detroit?

A. No.

Q. In San Francisco?

A. No.

Q. Nashville?

A. Yes, I have been in Nashville.

24618 Q. You know Nashville?

A. Well, I lived there ten years.

Q. You spent part of your career down there, didn't you?

A. Yes.

Q. What were you doing in Nashville?

A. What I said. I answered that.

Q. What did you say you were doing there?

A. I said I was general manager of the Southern Manufacturing Company, which made street railway equipment, and I was a designer also. I also had other interests there; I was not making my living out of engineering at that time.

Q. Did you ever sell medicine?

A. No. I have had stock in a medicine company, and lost the money.

Q. Sagwa remedy, was it?

A. No, I never had any active part in a medicine company.

Q. Was it Dr. Humphrey's specifics? What was it?

A. I really don't know. I lent a fellow some money once to go into it, and he gave me some stock, and I could not even recall the name of the company. I lost the money. 24620

Q. Omega oil, was it?

A. No, it was something that was not successful, so you would not have heard of it.

Q. You gave us some simile of a tribe living on forever. Did you have in mind any particular tribe or race that would illustrate what you had in mind?

The Master: That question is not allowed. Mr. Chambers covered the tribe.

Q. You did not mean the descendents of the Puritans in New England, did you?

The Master: Not allowed. I said Mr. Chambers had covered the tribe question.

Q. Would you say that locomotives might be maintained so that they can go on working forever? 24621

The Master: Not allowed. The witness has already answered that.

Mr. O'Brien: Exception.

Q. Do you know what was done with the locomotives that were discarded from the elevated road in New York City?

The Master: You can answer that.

The Witness: No, I do not. I imagine they were scrapped.

The Master: I was wondering whether you knew. I do know where some of them went, and

I will tell Mr. O'Brien where some of them are being used now.

Q. Mr. Allison, how about stacks, have you any system of maintaining them by which you say they will go on forever?

A. I do not say stacks will go on forever. I say they may be replaced.

Q. Wouldn't you have to by reason of the tie rods being there, wouldn't you have to replace the whole stack, practically?

A. You might have to replace the whole stack, but
24623 in a large gas plant that would not be—

The Master: Just answer the question.

Q. You say that the stack might have to be replaced entirely, but it would only be part of a plant, but the plant would run on forever?

A. Yes.

The Master: That is what he said over and over and over again.

Q. Isn't it the fact that fronts of boilers will bulge?

A. Well, the cast iron front of it won't bulge very much.

Q. You might have to replace it, take it down en-
24624 tirely?

A. Oh, boilers are repaired to a very great extent, if that is what you mean.

Q. The tubes have to be taken out?

A. Yes.

Q. The brick settings weaken and fall to the ground and have to be replaced?

A. Yes.

Q. And those repairs going on from time to time would mean that in a few years you have practically a new boiler?

A. Perhaps.

24625

Q. Is it your idea that the money which is spent to keep them in repair is part of the—is the stockholders' money and it is invested money in that plant?

A. It becomes stockholders' money as soon as it goes in to replace other plant that was originally bought with their money.

Q. Irrespective of whether it comes out of the operating expenses of the company?

A. Why certainly. No matter where it comes from.

Q. No matter where it comes from?

A. Yes.

24626

Q. Whether out of the consumers' pockets or not, if it goes into that plant in the shape of repairs, it belongs to the company, the stockholders, and it represents their investment?

A. It is a part of the duty of the consumer to make the replacements.

Q. Did you say yes to that?

A. Why, certainly.

Q. You say it is their investment?

A. It takes the place of their original investment.

Q. And that is what you understand by investment, or at least, to put it another way, you say that your theory of investment includes money so spent?

24627

A. It becomes the property of the ultility company.

Q. And part of its investment that you say is there represented as of the present date, the reproduction cost?

A. Yes. It would not matter where it came from, so long as it is their property. People are entitled to earn returns on their property. It does not matter where they get it from.

Q. It does not matter where they get the money?

A. Not a bit.

24628

The Master: Can I interrupt a minute, Mr. O'Brien?

By the Master:

Q. Isn't this a fair way to look at it, Mr. Allison? Take a plant that cost a million dollars, that I was talking about before, that is ten years old, and assuming reproduction cost at the end of ten years to be two million dollars, isn't it a fairer thing to say that that plant is worth reproduction cost, namely, two million dollars, allowing such depreciation as will bring it back practically to what it cost new, namely,

24629 one million dollars, as to their investment?

A. I cannot agree with you on that, Judge. If the tribunal is going to allow as a rate base present value the owners of that property—property has gone up just as any other property has gone up, and really at the present time property has only gone up as measured in money because money has gone down.

Q. Well, take this situation, a vessel is condemned by the Federal authorities during the war, and under the tax law that concern is entitled to set up a replacement fund to take care of that vessel. Now, the vessel was twenty years old. Would you say that the replacement fund to take the place of that vessel is

24630 the reproduction cost of that vessel, assuming that it has been kept up to date, on your theory, as good as new?

A. The government to be just in that case, would give to the owner what any one else would give for the vessel at the time they took it over, would give the market value of the vessel. Now, in a rate case you can see that—

Q. The trouble is, the government did do that, which left a large profit that this concern did not want to pay a tax on. Under the tax law they are entitled, instead of returning a profit, to replace the vessel, you

see. Now, the query is, do they replace that vessel as a new vessel, or do they place that vessel as an old vessel?

A. I do not think I get your question. They are going to replace the amount of money that the government gave them?

Q. No. I will give it to you in figures. Take the situation, the vessel stood on the books, we will say, at $20,000 and the government paid $100,000 for it because that was its value at the time, and that is what they could sell it for. That would show a profit of $80,000. Well, now, the owner of the boat 24632
said, "I don't want to report it as a profit, I need another boat, I want to replace this boat, I am going to replace this boat," and he goes out and has another boat built the same size, same style, same boiler, same equipment, same tonnage, which cost him $100,000, which eats up all the money that he got from the government. Now, does that $80,000 that he spent there over the $20,000 that the boat was carried at on the books—is he entitled to keep all of that and return none of it as a profit?

A. Why, no, how would the tax authorities look at that?

Q. I am asking you how you would look at it, on 24633
the theory of depreciation?

A. Well, I will look at it this way—

Q. (Interrupting.) On the question of actual replacement of an old boat or a new boat?

A. I think that illustrates very well my point, that the old boat at the time of its taking over by the government, or we may assume the utility at the time of its regulation, illustrates very well that the present reproduction cost of that vessel was the value to the owner. It is an exact analogy. The government takes over and the state regulates rates. They determine

the value and they practically buy or lease, you might say. They put this utility into the public service when they regulate it, and they have practically done the same thing as if the government in that ship case had said they won't give you $100,000 for this, but will rent it from you at a proper return on the $100,000.

Q. Well, now, what happens is this, this man when he replaces that boat has a brand new boat, absolutely new boat. The boat that the government took was probably just as useful, and on your theory was as good as new?

24636 A. On the assumption it has been kept up?

Q. Yes, because it had been kept up. But the fact is, that he can replace that boat using that $100,000, and he has got an absolutely brand new boat?

A. Yes, he has, your Honor, a brand new boat, but if we will assume that the other one was in perfect physical condition, and assume that the second boat was the exact duplicate of the first so it would be just as obsolete as the first, you have exact duplicates, and the old vessel will last just as long as the other.

Q. I prepared that report, and I reached the conclusion that I thought I had to allow something for depreciation, and I advised in that case that some-
24635 thing ought to be allowed for depreciation, and the government agent who came up agreed with me, because I was favoring the government, I suppose?

A. Well, Judge, wouldn't your answer here mean that the two vessels were not exactly alike?

Q. They are practically exactly alike. The thing is that the vessel we built was somewhat larger than the one that was taken, but I took it on a unit cost and figured it down to a vessel of exactly the same size and tonnage, in order to eliminate the difference in tonnage and the rest of it, so as to get it right down to a vessel of the same size, and then I felt that I

24637

had to allow something for depreciation, and I was not deciding this case at that time, I was not considering it as closely as I am now, and that is the decision I reached then, that is the way my mind ran originally.

Mr. O'Brien: Did the vessel you speak of here have a rating in Lloyds?

The Master: I do not remember that.

(Discussion off the record.)

Q. I will ask you to say what you have got on your mind, to help me arrive at a conclusion in this case.

24638

A. Your Honor said that your mind ran to the fact that there ought to be a depreciation. If your Honor in this very case had asked yourself, why, if the two boats are alike, are exactly alike, one is worth less than the other, you could have gotten but one answer. But the mind running that way is natural, because we have so many little things like coats and shoes and things like that of every day use, and they are getting a little old, are getting worth less. Those things are borne in on people's minds, and one of the stock questions of the more ignorant person—

Mr. O'Brien: And that includes us, does it?

The Witness: No, I did not mean you, Mr. O'Brien, at all, because I know you have had some experience. But I mean in arguing about a thing they will say, "Well, is this table or this coat worth as much as it was when new," an try to apply that to a utility. They are not comparable at all. The question cannot be asked at all.

24639

Q. Take as an illustration the watch business.

Mr. O'Brien: I will take a fountain pen and ask the witness if that was as good as it was when new.

The Master: Wait a minute, I will get to this watch. I have had this watch that I have in my pocket rebuilt about every time that I drop it on the ground—which is almost every time I take it out—and Benedict tells me within the last week or two when I asked whether it is worth repairing, that of course, he says, "It is just as good as new if you put a new spring in—as good as when you bought it."

Q. Take a Waterbury watch, Mr. Allison.

Mr. Chambers: What is your investment in

24641 it?

The Master: I don't know, don't ask me that; but every time I drop it, it costs six dollars for a new spring.

By Mr. O'Brien:

Q. Here is a Tiffany watch, Mr. Allison; could you conceive of that being repaired and kept on forever?

A. Certainly.

Q. And the fountain pen the same way?

A. Certainly.

Q. The Waterbury watch, too?

A. Those are absolute facts.

Q. A Ford machine?

24642 A. If it were repaired enough, yes.

Q. If it were repaired enough?

A. Yes.

Q. Would you not cease to have the old Ford?

A. You would.

Q. You would have a different Ford?

A. You would.

The Master: That is the witness's theory.

The Witness: But you have always got a Ford.

The Master: You have an entirely new plant, he says.

The Witness: You always have a Ford and you always have a plant.

The Master: When you put some new plate on it—

Mr. Chambers: But here is my watch and it is not a plate surface, it is solid.

The Master: But that is worth much more compared with a gold watch; it is worth a great deal more than what you paid for it.

Mr. Chambers: It is not worth that to me, because I won it in a bicycle race. That will wear right through, the silver. 24644

The Master: And then it is worth more than what you paid for it, or what it was bought at. Mr. O'Brien, we will stay here until you finish your examination.

Mr. O'Brien: Is there any reason why I should be penalized that way?

The Master: I do not think there is anything to waste that much time about.

Mr. O'Brien: If you think as much of this witness's testimony as you did of Mr. Miller's, I will dispense with him.

The Master: No, I say we have his theory, we know how he arrives at it. I may or may not 24645 agree with what he says after this case is finished, after I hear your experts. I have taken Mr. Allison's testimony as a pure matter of opinion. I understand his idea thoroughly and I cannot conceive of any other question you can ask him that will help you or help me. All you can hope to accomplish in cross-examination is to show the fallacy of a theory. If Mr. Allison's theory is fallacious you have shown it; if his theory is correct you have shown that.

Mr. O'Brien: Your Honor, Mr. Ransom again, by giving us a glowing story of the things

this man has done, has given a foundation to his theory, and as soon as I began to bring out those things with a view to showing you and the record in this case that there was not anything in that experience that warranted him in coming in here and giving us a new-fangled idea on depreciation, you shut me off. I want to know just where his leanings were, if he has been continually in the atmosphere of corporations, if he has received from them practically his income from year to year, except while he was holding that
24647 public position in St. Louis—it is important to have it, so the Court on appeal will know just who this man is who pronounces this Allison theory.

The Master: It will not make any difference. The Court is going to arrive at a conclusion on a theory as a theory. It will not make any difference to the Court whether Mr. Allison was an employee of these private corporations all his life or of public municipalities. He has got a theory, the theory is worth precisely what the Courts think it is worth. His interest or bias makes no difference. He is paid. I take it, Mr.
24648 Allison, that you are paid to come here by the Consolidated Gas Company?

Mr. O'Brien: And he has been drawing money since the beginning of last year.

Mr. Goetz: That is not true.

The Master: You have been paid to come here?

The Witness: I have not been paid yet.

The Master: But you expect to be paid?

The Witness: Certainly, I expect to.

Q. You have been paid, Mr. Allison, several sums of money already?

A. Not in this case.

Q. I mean for advancing to this complainant your ideas on depreciation?

A. I received the fees of expert witnesses.

Q. You are not ashamed of that, are you?

A. Not a bit of it.

By the Master:

Q. You were paid for preparing this pamphlet?

A. Certainly.

Q. You were paid to come and express those views?

A. Certainly.

By Mr. O'Brien:

Q. You served the Kings County Lighting Company by preparing a treatise for them on depreciation? 24650

A. Yes.

Q. And you prepared treatises for what other companies in and around New York State?

A. That is all, and the Consolidated.

The Master: That is all there is to it, Mr. O'Brien. Mr. Allison says that is his theory. I am willing to assume that he believes that to be right; but he may be wrong. I do not care how much you ask a man like Mr. Allison, you are never going to be able to show that he does not believe it himself.

24651

Mr. O'Brien: I want to make the record, your Honor, in my own way.

The Master: Oh, yes, you always want to make it your own way, which is a very long way.

Mr. O'Brien: If your Honor will let me proceed, I will proceed.

Q. Did you make any visits to the plants of the complainant company?

Mr. Chambers: We have arranged for conferences at four.

24652 James E. Allison, Cross.

The Master: We ought to be through in a very few minutes.

Mr. Chambers: Mr. O'Brien is in the conference. I do not think he ought to be shut off.

Mr. O'Brien: I told your Honor early in the day that that conference was scheduled.

The Master: It will be a little later, just as some of my conferences will be later. Let us finish.

Mr. O'Brien: I record my protest at being compelled to go ahead after four o'clock, the
24653 time your Honor has set for the sessions of this week.

Q. Mr. Allison, have you inspected any of the plants of the complainant company and if so, what plants and when?

A. None.

Q. Then your theories advanced here today have not any particular bearing upon the plants of the complainant company?

A. My theory applies to all plants.

Q. Of gas companies. Well, does the same theory —is it applicable to the plants of companies other than traction companies and gas companies?

24654 A. Well, yes, it is applicable to any large plant regulated, whose rates are regulated.

Q. Does it apply to real estate structures and buildings?

A. Not entirely, because a building is an entity by itself; it is not a collection of entities like a public utility is, where they can be renewed. This one can be renewed and that one renewed and keep the thing changing.

The Master: If the building, though, is part of a great big plant it includes the building?

The Witness: It includes it.

Q. Does it apply with equal force to bridges?

A. To one entity of the bridge. If the bridge is one structure you can renew parts of it, just as you can in a utility as a whole. Now, there might be something happen to the bridge as a whole; it might go out in a flood or something of that sort. Bridges, well-built bridges, have lives that cannot be determined. They may become inadequate. Well-built bridges—we have bridges in Europe that are thousands of years old, you know. A bridge has no definite life.

Q. Do you say yes or no to the proposition that your theory applies with equal force to the bridges in and around New York City, as it does to a gas plant? 24656

A. Not in the same way, because the bridge is one connected entity.

Q. Can you not replace the strands?

A. Yes, you can do that.

Q. Can you not repair the towers?

A. Yes.

Q. Can you not put down new flooring on the part that is traversed by pedestrians and vehicles?

A. Yes.

Q. What else, then, is there to a bridge that cannot be replaced? 24657

A. A bridge by the diversion of traffic or something of that sort might go out entirely. It is too impossible to imagine, a utility like that.

Q. Eliminating its going out in a flood and eliminating its going out by diversion of traffic, do you say a bridge like the Brooklyn Bridge, repaired, will stand there forever?

A. I cannot see any reason why it should ever go out.

Q. Would you say the same thing as to other bridges in New York City?

The Master: The question is not allowed.

A. It depends upon the size of them and where they are situated.

The Master: The question is not allowed.

Q. Take the telescope at Harvard University and the observatory there, would you say that that will go on forever, properly maintained?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Where is the dividing line between the classes of property to which you say this theory applies
24659 with full force and those to which it is not applicable?

The Master: The question is not allowed. It is all explained several times.

Mr. O'Brien: Exception.

Q. Is the only dividing line between the two classes that which separates plants made up of many units and that which represents properties that have only one unit?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

The Master: Counsel is simply restating in a different way what the witness has already said.

Q. Is it your idea that the only things that will
24660 take a plant or parts of a plant out of use are wear and tear, obsolescence and inadequacy?

The Master: That is not allowed.

Mr. O'Brien: You will allow it?

The Master: No. It is sufficiently covered.

Mr. O'Brien: May I not be permitted, your Honor, to dissect his definition?

The Master: I will not permit that question. I say that matter has been sufficiently covered.

Q. Are we to understand from what you have said here today that what goes out by obsolescence or inadequacy is not depreciation?

The Master: Not allowed.

Mr. O'Brien: Exception.

Q. Take a plant, Mr. Allison, in which the land costs $107,000, actual cost, and in which the plant and equipment cost $1,100,000, a total of $1,207,000; would you say that that $1,207,000 does not represent the investment in that plant at the present time?

The Master: The question is not allowed.

Mr. O'Brien: Your Honor, I want to get out by these questions just what the witness's definition is of investment. That term is used in court decisions, it is used in rate cases, and I 24662
thought I had an idea of just what it meant.

The Master: I rule that the matter is sufficiently covered and I will not permit any further cross on that subject.

Mr. O'Brien: He has not defined it today, your Honor.

The Master: I will not allow that question.

Mr. O'Brien: It is one of the elements in the principal question addressed to him by Judge Ransom, and it has not been defined.

The Master: Next question.

Mr. O'Brien: Exception.

Q. Will you define what you mean by investment in 24663
the theories that you have advanced today?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Is your idea of investment the original cost plus the increment of value that has adhered to the value down through the years since the original investment?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. You did concede that rails went out of use, wore out?

The Master: Same ruling.

Mr. O'Brien: Your Honor, I do not see how I can develop any cross-examination here of this witness if you are going to shut off every question that I ask.

The Master: Then I take it from that you have no further questions?

Mr. O'Brien: I have to ask the witness my questions in my own way, and where he has been previously examined, first hurriedly by the counsel for the complainant, almost defying the skill of the stenographer, and where he has been ex-
24665 amined in cross by my colleague, Mr. Chambers, we cannot possibly avoid overlapping some of the questions.

The Master: Any other questions now?

Q. Outside the Kings County case, in which a treatise by you was submitted by counsel for the gas company, have you ever advanced your ideas on depreciation before any commission or court in the Eastern States?

The Master: The question is not allowed: it is sufficiently covered.

Mr. O'Brien: Exception. I am going to ask
24666 Mr. Chambers' question, perhaps in a different form.

Q. I ask you whether any court, minority or majority, have ever approved your theory of depreciation?

The Master: I make the same ruling that I made to Mr. Chambers' question.

Mr. O'Brien: Exception.

Q. Has your theory ever been advanced by any well known economist, analyist, or scientist?

The Master: I will allow that.

A. It has been advanced by the only eminent economist that has even written on the subject. There

were four of them. They were Professor J. Lawrence Laughlin, the head of the Economics Department at Chicago; Professor Haney, of Texas; Professor Allyn Young of Cornell, and Professor Gethart of Washington University, at St. Louis. Those are the only economists of any distinction that have ever written on the subject of depreciation and they all agree with me.

Q. I thought you said only one of them did?

A. Oh, all four of them.

Q. Would you classify Dr. Humphries as an eminent economist, publicist, scientist? 24668

A. Well, I do not think I ought to pass upon that.

The Master: I think you ought to answer that question, Mr. Allison.

The Witness: Economist, he said. The only four economists we have—

Q. Do not get any—

The Master: Do not start any argument with the witness, or I will take him off the stand.

Mr. O'Brien: No witness is going to get away from me by—

The Master: Who is Dr. Humphries?

The Witness: Dr. Humphries, the head of the Stevens Institute, and a very eminent gas engineer; but he is not an economist. 24669

Q. You disagree, then, with Dr. Humphries' views on depreciation?

A. Well, I have not them in my mind.

Q. You do not remember them?

A. I have not them in my mind. I think that some of his conclusions probably would not coincide with mine.

Q. Do you know Mr. Bahere, of Chicago?

A. Mr. Bahere, yes.

24670 James E. Allison Cross.

Q. You know him, William A. Bahere?

A. Yes, I know him.

Q. Would you disagree with him, too?

A. I expect I would. I do not know his views.

The Master: Why do you expect that you would disagree with him then?

The Witness: I would have to go into a long discussion to tell you that, your Honor.

Q. It is only these economists that agree with you?

A. That is what you asked me.

24671 Q. Oh, I took in others.

A. I do not remember it

Q. Did I not say scientists?

The Master: You asked him if there were any agreed with him and he said four of them.

Mr. O'Brien: He said four economists.

The Master: Yes, that agree with him.

The Witness: And a number of engineers agree with me—numbers of them. The engineers on some of the commissions agree with me. In fact, Mr. O'Brien, there is a whole school of my side of thinking.

24672 Q. It is the Allison school: what is the use of talking.

A. No, I would not flatter myself that way.

The Master: Next question.

Q. You keep in that medicine business.

The Master: The next time that happens, Mr. O'Brien, I am going to take the witness off the stand.

Q. Mr. Allison, do you disagree with the United States Supreme Court in the views they expressed on the question of depreciation in the Knoxville Water Company case?

A. You will find my opinion of that in the pamphlet—

The Master: Do you disagree with it?

The Witness: No, I place an interpretation on it which coincides with my views.

The Master: Next question.

Q. You interpret it in that way?

The Master: I will not allow that.

Mr. O'Brien: The other answer is not any use, unless we get—

The Master: I will not go any further with it. If the United States Supreme Court has held 24674
to the contrary I will not pay any attention to his testimony; I will disregard it.

Mr. Chambers: They laid down the rule.

The Master: All right, then, what is the use of cross-examining Mr. Allison, if the United States Supreme Court has established a different rule? I cannot take Mr. Allison's opinion against a United States Supreme Court decision.

Mr. O'Brien: We are gradually finding out how much he is acquainted with the subject.

Mr. Chambers: Just as I found out this was going to make some new law—this case. Maybe you will not follow the rules laid down. 24675

The Master: Maybe I will not in some instances.

Mr. Chambers: That is what we want to see.

The Master: But if the United States Supreme Court has made a rule on depreciation I am not going to take an expert's opinion of what it should be just yet. I have practiced law too many years to do a thing like that.

Mr. Chambers: I would like you to take Goetz and Ransom on depreciation.

The Master: What I would like you to do is to let Mr. O'Brien finish this cross. I cannot see any reason for this cross, for the life of me.

Mr. O'Brien: With these interruptions, your Honor, it is hard to preserve a continuity of thought.

The Master: Proceed.

Q. Did I understand you to say that no public service corporations except Massachusetts had any rate-making powers?

The Master: The question is not allowed.

24677 Mr. O'Brien: He used that expression.

The Master: I know he said that, but I do not care anything about it.

Mr. Ransom: He said the regulation of the rate of return.

The Master: He said something about it, but I will not pay any attention to it now. What do I care whether public service commissions throughout the country have or have not the power?

Mr. O'Brien: He proceeded to qualify this man by telling you what he knew about rate making, your Honor.

24678 The Master: Next question.

Q. Is it your opinion, Mr. Allison, that earnings above a fair price and a fair return upon investment, turned into construction account, in a gas company, should not be deducted from the base upon which a fair return at the present time is to be computed?

The Master: I will not allow that. Next question.

Mr. O'Brien: Exception.

Q. Would you include in your idea, and do you include in your idea, the term "investment," present investment, the things that were bought by the

earnings of the company in the past, above a fair return on their investment?

The Master: I will not allow that; it is sufficiently covered.

Mr. O'Brien: Exception.

Q. Assume a plant where by obsolescence or by reasons of obsolescence and inadequacy and violence or defective construction, $500,000 worth, measured by the book cost, has gone out of use. Would that be $500,000 of depreciation in that plant?

The Master: The question is not allowed.

Mr. O'Brien: Exception. 24680

Q. Would you consider the plant worth that much less at the present time?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Where by obsolescence or inadequacy plant is eliminated to the value as per its book cost of $500,000, which has not been replaced in any way since, would you consider, the investment remaining intact otherwise, the depreciation there to be $500,000?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

The Master: Mr. O'Brien, if you think you 24681
are going to tire me to a point where I am going to order the witness off the stand, you are very much mistaken. I am going to have him sit here all night, if necessary.

Mr. O'Brien: Your Honor, I am trying to get various items of this man's view.

The Master: You have repeated over, over and over again items which I have ruled out. You are trying to get me to withdraw the witness from the stand, and I will not do it.

Mr. O'Brien: I am going to assume, in stopping my examination, your Honor is not permitting any further examination along the lines I have examined about in the last half hour. I note an exception in that respect.

The Master: Any question, Mr. Clark?

Mr. Clark: Yes, sir.

The Master: Go ahead.

CROSS-EXAMINATION BY MR. CLARK:

Q. Mr. Allison, is it not a fact that in a gas plant
24685 that is perfectly new there would be less replacements in the first year than there would be in a similar plant that is ten or twenty years old?

A. The probability is there would be more money spent, if you will call it replacements, replacing pipes and things of that sort, in a new plant, than there would be in an old one.

By the Master:

Q. There would be more replacements in a new plant in the first year?

A. If you count replacement as money spent in the line of pipes and that sort of thing.

Q. He is talking about keeping up the plants with
24684 repairs, the substitution of parts and all the rest of it. Would you spend just as much money on a new plant in the first year as you would in the tenth year?

A. Not on the substitution of parts, but your maintenance account, which is the same, would really—would probably be as great in the new plant as the old one. There is what you might call an adjustment expense in water gas plants.

Q. How about the second year, after you had adjusted it?

A. The actual replacements would probably begin to accrue as the other would diminish.

By Mr. Clark:

Q. And if they accrued they would accrue increasingly as the plant got older, would they not?

A. No, they would not.

Q. Up to a certain point?

A. They would get to a level.

Q. But up to a certain point they would increase?

A. Up to a certain point, but it would begin very quickly, especially in gas mains, because—

The Master: We are not talking about gas mains at all; we are talking about the manufacturing plants. 24686

Q. Take the plant where there are largs items, the large items of the plant would last longer than the smaller items of the plant. Isn't that correct?

A. That is true.

Q. When they do wear out there will be a larger amount that must be taken care of by replacement?

A. Yes.

Q. And would not the effect of that be to increase the replacement account as the years go on?

A. Not increasingly so. It will increase up to a certain level in a large plant.

Q. It will increase up to a certain level?

A. Yes. 24687

Q. Isn't that fact the reason which gives new plant or a new instrumentality a greater value or greater exchange value than similar plant which is not new?

A. No, I do not think it is, because while the outgo for some of those replacements might be increasing for a few years, there are other expenses incident to a new plant which would be decreasing. So that your market value of your plant new, or plant which has arrived at its gait, you might call it, would probably not be greatly different.

By the Master:

Q. What plant did you ever operate that showed that actual result?

A. Well, no one could operate a plant and say that, because it is developed in plants that have gone through a generation or so of men.

Q. No, but let me ask you, have you ever taken over a plant new and found by actual experience that your maintenance and replacement would be high the first two or three years?

A. I have never taken over a new plant, and in
24689 these large plants the span of time there would be too great. You have to deduce it.

Q. This is pure theory, is it not?

A. It is theory, certainly.

The Master: Next question.

The Witness: It is based on facts.

Q. That is what I was trying to find out, whether it is based on actual observation by you, and I understand it is not?

A. The records of plants do not as a rule go back that way. We know that new plants do take a large, you might call it—

Q. I am very much impressed with some of your
24690 arguments as to the value of a plant being as good as new when it is kept up, but I cannot follow this at all.

A. I would like to explain it, if that is the case.

By Mr. Clark:

Q. Have you made any research to ascertain whether such a case is actually true?

A. Well, I have in a certain way. Now, within the last week, I have been talking to an engineer who has charge of a great many water works, and he agreed with my—you might say theory, from his experience of facts.

Q. Aside from talking to the engineers, have you actually taken the plant? We have here in New York the Astoria gas plant built new some fifteen years ago. You are acquainted with that, I suppose?

A. Yes, I know of the plant. Yes.

Q. And there are probably similar plants in other parts of the country which are not new?

A. Yes.

Q. Have you ever compared the figures?

A. No, I have not.

Q. With similar plants?

A. I have not. 24692

Q. And yet you advance the theory without any scientific research on the subject?

A. Well, I would not say that. For eleven years I have been talking to people who are informed on this, who have been operating engineers, and they all agree that such is the state of facts. Now, I have not myself time in ten years, or inclination to watch a new plant, small plant, and compare what is the difference in, you might call, adjustment cost and the increase in replacement, how they would compare. But my information is from associating constantly with men who do know.

The Master: I think that examination was very useful and helpful to me. 24693

Mr. Ransom: If the Court please, may I just say this: Aside from certain questions to Mr. Carter, who I expected would be our last witness, this closes the complainant's case. The matter of the details of the cost of production, which the defendants have asked for—I find that the details of the cost of production can be sent to them tomorrow morning. I would prefer not to put Mr. Carter on until Mr. Teele's examination has been concluded. The questions that are to

be put to Mr. Carter are on a number of matters not previously covered, where I think there may be points before the close of the case, and my suggestion would be, if your Honor is willing, that tomorrow we send these bulky tables of cost of production to the defendants.

Mr. Chambers: Distribution, too.

Mr. Ransom: As soon as it is out. Some time tomorrow. The other will be ready the first thing in the morning, and then on Monday afternoon finish with Mr. Teele. I would not be at all
24695 surprised if we could also go ahead with Mr. Carter on Monday afternoon. I would be ready. What I am doing now, of course, is checking over to see whether everything has been covered that needs to be covered.

The Master: Do you consent to that, Mr. O'Brien?

Mr. O'Brien: It is pretty hard to say, your Honor, just about how much interim ought to come. They are bulky exhibits. Surely you cannot work Sundays.

The Master: In the first place you suggest that we adjourn over tomorrow?

24696 Mr. Ransom: Yes.

The Master: We will adjourn until Tuesday morning at 9:30 A. M.

Mr. Ransom: And they will be ready to go ahead at that time?

The Master: Yes.

Mr. Chambers: You will be ready.

The Master: And you will be ready.

Adjourned to Tuesday, December 9, 1919, at 9:30 A. M.

Last Complainant's Exhibit 397.
Last Defendants' Exhibit AA31.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 24697

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 9, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK, and MR. NEUMANN, of Counsel for Public Service Commission. 24698
MR. O'BRIEN, of Counsel for defendant Swann.

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ARTHUR W. TEELE, resumed the stand:

CROSS-EXAMINATION BY MR. CHAMBERS:

The Master: You are on Exhibit 366, are you not, Mr. Chambers?

Mr. Chambers: Yes. 24699

The Master: You are all on Exhibit 366, so you better proceed first.

Q. This schedule, "Cost of Distribution"—does your schedule vary, taken for the year 1906 from the books, or is it just exactly as it is set up on the books?

A. Of course.

The Master: I take it your question means are there any adjustments?

The Witness: Of course there are adjustments. It shows there are adjustments on every page almost.

Q. On the second page for 1906, what accounts are adjusted?

A. None.

Q. And on the third page?

A. None.

Q. And on the fourth page?

A. None.

Q. And on the fifth page?

A. Just a minute. On page 4 there is a deduction from general office not applicable to gas business, $3,194.11.

24701 Q. And that is the only one on that page?

A. I believe so, yes.

Q. On the next page 5, that seems to be all there are?

A. They are all adjustments.

Q. Those are all adjustments?

A. Yes.

Q. On page 3 you have an item for legal expenses $131,037.97. You have that item, "Legal Expenses"?

A. Yes.

Q. Turning over to page 5, you have got an item, "Gas Rate Appeal Litigation." Just above that you have "Charge of Sundry Debtors." Does that mean

24702 that you charged that amount of $92,709.98 to other companies?

A. It means the company charged it to other companies.

Q. The company charged it to other companies, and $18,216.75 is what figure?

A. That is the amount charged to other companies just as it states.

By the Master:

Q. Is that an offset to the $131,037.97 item on page 3?

A. It is the amount which the company charged to other companies.

Q. Out of that $131,037.97?

A. Whether it comes out of the $131,037.97 I do not know. I have not examined these accounts.

By Mr. Chambers:

Q. What comes out of that $131,037.97?

A. I do not know. I have not examined these accounts. This statement is a tabulation from the books, as stated, with the profit and loss entries of the various years, which overlap from one year to another, distributed or allocated to the years to which the entries apply.

Q. There is in this cost of distribution for 1906 24704
a charge for the gas rate litigation?

A. I do not know. I have not examined the accounts, I cannot say.

Q. You have it right here, gas rate appeal litigation?

A. That is what the ledger account shows. I do not know what is in the account. I have not examined any of these accounts other than what was necessary to allocate to the proper years the profit and loss entries outside of the closing entries.

Q. So you do not know whether any of that, or how much of it, relates to the gas litigation?

A. I do not. 24705

Q. Then you cannot tell me the details about any of these accounts?

A. I cannot.

Q. How did you allocate that item on the fourth page for general office, as between what you call the gas business and the non-gas business?

A. I will have to refer to the working sheets on it. In the year 1906 the account of general office carried expenditure for repair to buildings, and we found it necessary to make an analysis of that account in order to take out the expenditure repairs to

buildings, the repairs on those buildings which were not claimed to be used in the gas business.

Q. Well, this relates only to general office building?

A. This does not relate only to general office building; it relates to the account general office.

Q. It relates to other buildings?

A. Which carry the expenditure of repairs to buildings in 1906.

Q. How did you know which ones were not used in the gas business?

A. From the statement of the uses of real estate
24707 which had been prepared and filed in this case, showing the properties claimed to be used and useful in the gas business, and from the additional information furnished to us by the engineers of the company.

Q. What claim do you refer to now that had been filed in the case?

A. Exhibit 178.

Q. That only relates to 1918.

A. It relates to the properties claimed to be used and useful in the gas business, and that was supplemented by the information furnished to us by the engineer of the company, showing the changes in that property prior to 1918 and back to December 31st,
24708 1905.

Q. Then you had in addition to the Exhibit 178 some document that ran back to 1905?

Mr. Ransom: Objected to as fully covered.

The Master: Or information?

Mr. Chambers: Or information. Did you?

Mr. Ransom: It has been fully stated.

A. I so stated.

Q. What was that?

The Master: That is the same information you had on which you made your tax adjustments?

The Witness: Absolutely.

The Master: Next question.

Q. You had fully covered that when I asked you about taxes—that information?

A. I think I did.

Q. You did not have any additional information, did you?

The Master: Other than what you had with reference to the tax items.

A. Other than what we had with reference to the tax items. It was necessary for us to have information with regard to taxes in order to properly distribute the tax items, and we used that same information with respect to these repairs to buildings. 24709

Q. You could not make this adjustment on Exhibit 178 alone?

A. What do you mean, alone?

Q. You had to have additional information?

A. I certainly had to have the information as to what purposes or what uses the buildings were put to between 1905 and 1919.

Q. Have you any way of telling me what pieces of property you included in that?

A. Yes.

Q. Will you just tell me? 24711

A. In the deduction of $3,194.11?

Q. Yes, or the other way—what you included in the applicable to gas business, what plants?

Mr. Ransom: Objected to. That has been fully shown with respect to taxes. It is not any different for one purpose than for another.

The Master: The witness was asked on the tax question to itemize the properties. I will let him itemize them now.

Mr Ransom: They were itemized and furnished to the defendants at their request.

The Master: I will let the witness state.

Mr. Ransom: They have had a bulky schedule covering it.

The Master: Go ahead, Mr. Teele, if you have a statement.

A. No. 4 Irving Place, No. 2 Irving Place—No. 2 and 4 Irving Place; 18th Street property; 18th Street clearing vacant lots; No. 2 Irving Place; 122, 124 and 128 East 15th Street.

Q. That is all?

A. That makes up the $1,668.45.

24713 Q. On page 5 you made no apportionment there of the charge of sundry debtors, $92,000; you just took that right off the books. There is not any apportionment of it there, or allocation, is there?

A. I should say there was. The entry states there was an apportionment.

Q. How did you make that up?

A. By reading the entry and determining the portion applicable to other years.

Q. Where did you get the proportion applicable to other years from?

A. From the information furnished in the entry.

Q. That is, you did not use anything outside of the

24714 entry there?

A. And whether there were any papers underlying the entry to which we had to refer in this particular instance, I do not now recall.

Q. The gas rate appeal litigation. Was that taken right from the books, or did you apportion that?

A. What do you mean?

The Master: That is part of that $92,000.

Mr. Chambers: That is right.

Q. What you said just now about the year 1906 would in all respects apply to the other years of 1907 to 1917, inclusive?

The Master: Wherever the same items appear the same adjustments appear, I suppose.

A. Yes.

The Master: The same adjustments?

The Witness: Where the same items appear the same things will apply as I have said for 1906.

Q. That is, wherever there appears general office, not applicable to gas business, you made the apportionment in the same way?

A. Yes; that will only apply to 1906, 1907 and 1908. 24716

Q. You must have, then, received information concerning each one of the years, as to what property was used?

A. I have stated so about a dozen times.

Q. Could you just read off what was used in 1907, 1908, and 1909 and running right through—what pieces of property you included in that item "General Office," or are they the same? I want to find out where there is a variance or where you change.

The Master: This all could have been gotten without wasting time in court, Mr. Chambers.

Mr. Chambers: How?

The Witness: This material was all available for them to go over. 24717

The Master: You know how.

Mr. Chambers: No, I do not. I know of no way of finding out what he used or what pieces of property he included.

The Master: You know perfectly well that Mr. Teele's working sheets have been at your disposal.

Mr. Chambers: That does not give it.

The Master: It was perfectly easy for you to find out this information and spread it on the record quickly.

Mr. Chambers: Suppose I did, would I offer it? I guess not. I want it sworn to by the witness Teele.

The Master: I know, but it was perfectly easy for you to have gotten the information and get it from him with a leading question, "Have you included such and such items, or have you excluded such and such items?"

24719 Mr. Chambers: When could I have done it?

The Master: That is why I adjourned until Tuesday morning, to give you a chance to do it.

The Witness: For 1907—

Mr. Chambers: Yes, and we had other things.

The Master: I will not allow the question if you feel that way about it.

Mr. Chambers: Exception.

The Master: The Master rules that that information should have been obtained from the material accessible, and counsel should have been in position to have directed the witness's attention to the information, and have gotten it on the record quickly and without wasting time.

24720

Q. Where were you last Saturday and Monday?

The Master: Question not allowed.

Mr. Chambers: Exception.

Q. You were prepared to give me the information?

The Master: Question not allowed.

Mr. Chambers: Exception.

Q. Now, for 1906, I find no credit for "Miscellaneous Income." Wasn't there any?

A. What are you looking at?

Q. I am looking at Sheet 4, Cost of Distribution. Now, you look at Sheet 12, and you will see for 1908 you have an item "Miscellaneous Income, Scrap," "Miscellaneous Income, Miscellaneous Items." Why wasn't there any for 1906?

A. I don't know.

Q. You haven't set up any?

A. I don't know—I haven't shown any here.

Q. Did you look to see if there was any?

A. I did not.

Q. You didn't set it up because the company didn't, or because you didn't find it in the books? 24722

A. Because I didn't find any in the books.

Q. Did you look personally?

A. To see if I could find any?

Q. Yes.

A. I did not.

Q. Now, in 1907, the same thing, on page 8, you haven't set up any credit for "Miscellaneous Income" of any kind. Does the same thing apply to that as applies to 1906?

A. There is no item entitled "Miscellaneous Income."

Q. I am asking you, did you make the same effort to ascertain? 24723

A. I made the same effort, yes; I didn't make any effort to ascertain. The account "Profit and Loss Adjustment" does carry some miscellaneous revenues, I assume, without having investigated the account.

Q. What do you base that assumption on?

A. Because of the information that I have that profit and loss adjustment is the predecessor of the account "Undistributed Adjustment" to which are credited certain miscellaneous revenues.

Q. You cannot tell me now what the income was for those years?

A. No.

The Master: This examination, Mr. Chambers, relates to Exhibit 366, doesn't it?

Mr. Chambers: I assume that it does.

The Master: Don't you know?

Mr. Chambers: It relates to cost of distribution, of which the summary is on 366.

The Master: That is what I mean. The situation is, that in order to facilitate the cross-examination on 366 Mr. Teele has furnished you and other counsel an itemized statement showing how these figures are arrived at. Isn't that true?

24725 Mr. Chambers: I did not so understand it. I understood you required him to furnish us with this information as amplification of Exhibit 366.

The Master: Not at all. I told him to give it to you so as to save time on cross-examination, so you could make your analysis before you cross-examined.

Mr. Chambers: I did not so understand.

The Master: Mr. Teele has prepared for you very elaborate data, and detail, taken from his notes, showing just how these figures are arrived at, cost of production, cost of distribution, and certain tax items, as called for by Maj. Clark. That is correct, isn't it, Mr. Teele?

24726 The Witness: It is.

Mr. Chambers: I understood that you stopped me from cross-examining as to the items on Exhibit 366. I was cross-examining Mr. Teele as to Exhibit 366 and wanted to know the figures he used, and how he made up his cost of distribution, and you stopped me and prevented me from further cross-examination, so that Mr. Teele might furnish a schedule of these details.

The Master: The record shows what I did. My mind is perfectly clear as to what I did. I

directed Mr. Teele to do a lot of work that would save a lot of time.

Mr. Chambers: He said it already had been done.

The Master: He didn't say anything of the sort.

Mr. Chambers: He said it had already been performed, except for the typewriting, and it was being gotten up.

The Witness: I beg your pardon, Mr. Chambers, I didn't say so. I said the work had been done, but the tabulation had not been made. 24728

Mr. Chambers: What is that?

The Master: We have had enough of this.

Mr. Chambers: The work had been done, he says.

The Master: Next question.

Mr. Chambers: I don't see why we are refused reasonable questions every time we get up here to cross-examine, why there should be any argument about the information which we desire to have and need and which was promised to us, both by the Court and by the witness.

The Master: The stenographer will note that it is over five minutes between each question put 24729 by counsel.

Mr. Chambers: Well, you shut off my examination, and I am looking for something now that I can ask so as to avoid repeating the same question. We are not allowed to ask these important questions.

The Master: I won't have any more of these speeches, Mr. Chambers. If you have any question to ask, ask it.

Q. Now take your schedule for cost of production—

The Master: On what item of Exhibit 366 are you talking about?

Mr. Chambers: Not any on 366, on this schedule of cost production.

The Master: I will not permit any cross-examination on the cost of production. I am permitting cross-examination on Exhibit 366. What item on 366 are you talking about?

Mr. Chambers: Cost of production.

The Master: Which year?

Mr. Chambers: Well, I started on 1906.

24731 The Master: Cost of production $5,112,291.86—now, what do you want to ask about that item? The witness, as I understand it, has prepared a schedule marked "Cost of Production, 1906 to 1917," which shows the items making up the figures of $5,112,291.86. Is that correct, Mr. Teele?

The Witness: It is.

The Master: Which is now in the hands of Mr. Chambers?

The Witness: It is.

The Master: Go ahead.

Q. Why didn't you state—in your cost of production for 1906, gas production at the 14th Street plant 24732 —you haven't given any details there, have you, like you did for 1918, that is, how much generator coal was used, have you? You have not separated any of that?

A. I have not undertaken to. I have given you the details of the figures making up the item, "Cost of Production" on Exhibit 366, taken from the books.

Q. Did you divide your cost of production at the 14th Street plant into its elements so as to ascertain what proportion of the $438,809.39 was included.

or what part of it was made up of the generator coal used?

A. I have not.

The Master: Now, wait a minute before you go to another question. The item which Mr. Chambers had just referred to is an item which appears in your data furnished to Mr. Chambers showing that in the item of $5,112,291.86, there was an item—in other words, that that item of five million dollars plus is the total of various items, plus the item appearing on ledger folio 806, 1906, gas production, 14th Street station, 24734
$483,809.39. Is that correct?

The Witness: Yes, sir.

Q. Now, Mr. Teele, can you give us that information?

A. I cannot.

Q. You did not ascertain it?

A. I have not undertaken to analyze the account.

Q. Is that true of the 21st, 42nd, 44th and 99th Street stations?

A. It is true of all the accounts on Exhibit 366 with the exception of those accounts to which I have previously testified.

Q. Is that true of gas manufactured, and repairs 24735
to apparatus and repairs to buildings and tools.

The Master: The question is not allowed. The witness has already stated that it covers every item.

Q. Is it true from 1906 to 1917, that same answer?

A. That is what I said in my answer.

Q. Well, is it true for all the items for all the years?

A. That is what I said, with the exception of those to which I have previously testified.

Q. Why didn't you ascertain that the same as you did for 1918?

A. I did not undertake to do it.

Q. Have you apportioned any of this expense of cost of production for any of the years?

The Master: I don't get that question.

Mr. Ransom: The question is vague.

Q. Have you apportioned any of the expense of the cost of production?

A. I don't understand your question.

Q. Any of these items set forth on this schedule?

24737 The Master: Have there been any adjustments.

Q. Adjustments or allocations?

A. The adjustments are stated at the end of each year.

Q. And those are the only adjustments that you made?

A. So far as I now recall.

Q. Now, take page 2, to what do you refer when you say that the allocations or apportionments are at the end of each schedule?

A. The items added or deducted.

Q. And those are the only ones to which you refer, are they?

24738 A. So far as I now recall, yes. If there are any exceptions to that they stand out very clearly.

Q. Are there any exceptions?

A. I don't know without going over each sheet. I think not. In the years 1906, 1907 and 1908, you will see that we have separated the residuals in order to show the gas production account gross, and have shown the residuals at the end.

Q. Where did you get the information from in regard to the residuals?

A. Analyzed the account to find out what was residuals.

24739

Q. You did analyze that account?

A. For this purpose.

Q. But you do not give the details here?

A. No. It makes no difference in the net.

By Mr. O'Brien:

Q. What is that, Mr. Teele?

A. It makes no difference in the net.

By Mr. Chambers:

Q. You mean whether you analyzed it or not it makes no difference?

A. Whether I show gross on both sides, or show the net.

24740

Mr. Chambers: I want to cross-examine the witness on these other schedules that were introduced the other day, which I understand do not necessarily relate to 366.

The Master: I don't know what schedules you are talking about.

Mr. Chambers: I will inform you. Plaintiff's Exhibit 382, for one.

Q. Have you got Exhibit 382 before you, Mr. Teele?

A. If you will give me the title of it, Mr. Chambers.

Q. Revenues and Expenses of the Gas Business for the Year Ending October 31, 1919? 24741

The Master: My recollection is that the yearly statement ended in August or September.

The Witness: The yearly statement ends December 31st.

The Master: But you had eight months ending August 31st?

The Witness: Yes, sir.

The Master: And this runs it to October 31st?

The Witness: This is for the twelve months ending October 31st, 1919.

The Master: Didn't you ask some questions about this before, Mr. Chambers?

Mr. Chambers: No, I did not.

The Master: There are two months there, September and October.

Mr. Chambers: I ask that these schedules be marked for identification, first schedule "Cost of Production, 1906 to 1917, Inclusive," about which I attempted to ask the witness questions, to be marked for identification.

The Master: Take that off the record. I
24743 won't permit any such statement as "As to which I attempted to ask questions." As to which you did ask questions.

Mr. Chambers: As to which the Court would not let me ask any more than I did ask.

The Master: That is all right.

Paper marked Defendants' Exhibit AA32, for identification.

Mr Chambers: Now, I ask that the schedule, "Cost of Distribution, 1906 to 1917, Inclusive," about which I was just interrogating the witness, be marked for identification.

Marked Defendants' Exhibit AA33, for iden-
24744 tification.

Q. On the first page of this Exhibit 382, Mr. Teele, there seems to be an item "Renewals and Replacements 3 cents per M basis, actual loss charged in operating $875,435.55"?

A. Yes.

Q. Will you please explain that? It is not carried out in the last column?

A. What is not carried out in the last column?

Q. That item I have just mentioned doesn't seem to be carried out anywhere.

A. Renewals and replacements 3 cents per thousand basis, Schedule 12, is extended $549,647.71.

The Master: Which is less than the actual amount expended in that charge?

The Witness: Less than the amount for the twelve months.

Q. What did you include in that amount of $875,435.55?

A. I included the amount actually charged to Plant Withdrawn from Service Suspense between the dates of November 1, 1918, and October 31, 1919.

Q. Do you know what plants those were?

A. I haven't the detail of the charges before me.

Q. Did you have them? 24746

A. I think I have a complete analysis of the charges.

Q. Will you furnish them?

The Master: Not allowed.

Mr. Chambers: Exception.

Q. We would like to have you, Mr. Teele, give us the plant that you included in this amount?

The Master: The question is not allowed.

Mr. Chambers: Exception.

The Master: You had plenty of time to get it.

Q. The cost of production, have you the details for the months of September and October, 1919, the same as you have for the previous months, all of 24747 those details are here, are they, in Schedule 9?

A. The details that are shown by Schedule 9 are here.

Q. For the two months?

A. Schedule 9 includes the two months.

Q. Now, this figure, "Net Loss per Thousand Cubic Feet of Gas Sold" is the reduction from each figure so set forth in the schedule?

A. It is a computation.

Q. It is not based on anything but these figures, is it?

A. That is all.

Q. Now, the rental of jointly used facilities. Was that apportioned or ascertained in the same way that you did in the period from January 1, 1919, to August 31, 1919? The same answer you made to that you would make to this, page 6?

A. The same answer that I made when?

The Master: For the eight months' period.

The Witness: Yes.

Q. The period January 1, 1919, to August 31st?

A. It is compiled on the same basis, right straight through.

24749 Q. And is that true of "Interest on Bank Balances" on the preceding page 5?

A. It is with the exception of $285.48, which is a non-gas item in there, and was taken out; otherwise in that it is exactly the same, it is directly from the ledger accounts.

Q. I do not see that amount that you have just quoted?

A. No, you do not; you see the result after taking out that amount.

Q. Out of which item did you take it?

A. Out of miscellaneous revenue.

Q. Where did you get your information that caused

24750 you to take that sum out?

A. From the books.

Q. Now, "Sales on Gas," the same answer you would make to this that you did to the preceding period, the eight months' period?

A. Yes.

Q. The same for "Rent of Gas Appliances"?

A. Yes.

Q. And "Gross Profits from the Sale of Gas Appliances"?

A. Yes.

Q. Now, on page 9, the item of "Gas Transferred," have you the details of that for the two months of September and October, 1919?

A. I have. The items for September and October which are included in this, yes, I have the items which went into the whole calculation.

Q. Will you please give us those?

The Master: Request denied.

Mr. Chambers: Exception.

Q. Will you give us the other details with regard to gas transferred, where it came from and was that gas received from other companies? 24752

A. This is gas received from other companies.

Q. Received from various other companies?

A. And charge for the use of the Mutual's plant.

The Master: I suppose, Mr. Teele, it would be possible if you took your figures for the eight months on gas transferred and deducted that from the total for twelve months—oh, no, this runs into the previous year?

The Witness: This runs into the previous year. What I did was to take the actual bills for November and December and for the ten months of 1919.

Q. Can you tell us how much gas was transferred 24753 from the Standard Company, which is included in that?

Mr. Ransom: I object to that. That is shown on a cost sheet which have been furnished.

The Master: I won't sustain you on that ground. I will let the witness state how whether he can give us the figures of gas transferred from the Standard Company, September and October.

The Witness: Not for September and October. I can for the twelve months, from the information before me.

Q. Which twelve months?

A. Ending October 31, 1919.

The Master: From November 1, 1918 to October 31, 1919?

Q. Then will you give us that?

A. The net amount transferred from the Standard Company is 155,395,100 cubic feet.

The Master: That shows on this other exhibit, 387?

The Witness: Yes.

The Master: Can you give us the gas transferred for the two months that is included in that
24755 figure from the other companies?

The Witness: I cannot from the information I have before me. It is easily ascertained from the books.

Q. Where did you get this amount, "Cost of Production per Thousand Cubic Feet"? Is that a computation made by you?

The Master: I thought he just answered that, didn't you?

The Witness: No.

Q. I did not ask him anything about it that I know of. Maybe I am out of my head, but I do not think
24756 I have asked him anything about it.

A. It is a computation.

Q. And how did you make it up?

A. Dividing the total cost of production by the total cubic feet of gas sold.

Q. The total cost of production as stated in this exhibit?

A. Yes.

Q. By the total of feet of gas sold as stated in this exhibit?

A. Yes.

The Master: Of course, in all of this talk about cost of gas production in these figures, it includes the amount paid to these other companies, doesn't it?

The Witness: It does.

The Master: Which is not strictly cost of production, it is cost of gas that they sold.

The Witness: It is cost of production as set out in this schedule.

The Master: Yes.

Q. That is to say, that it is not strictly cost of production. 24758

The Master: Question not allowed. You don't have to repeat what I have already said.

Mr. Chambers: Well, the trouble is that the Master is not testifying.

The Master: No, but the witness is, and I asked him a question and he answered it.

Q. Why do you call it cost of production?

Mr. Ransom: Objection.

The Master: Not allowed.

Mr. Chambers: Exception.

Q. "Commercial Salaries" on page 12, did you include all of the salaries of the entire commercial department of the company? 24759

A. It combines the five branch accounts as carried in the ledger.

Q. What salaries were generally included, the same as in the other months, eight months?

A. Yes, the same classification of accounts is maintained.

Q. And that is true of all this information on page 12?

A. Yes. There is a slight change on the books in the classification of some of the expenditure, but it is only to amplify it in 1919, and I simply consolidated it to the 1918 classification.

24760 Arthur W. Teele, Cross.

Q. Now, "the Salaries General Office," on page 13, include all of the salaries of the general office? Did you make any apportionment at all?

A. No.

Q. As to the time any of these employees spent in working for other companies?

A. No, this is the amount shown by the ledger account.

Q. For instance, Mr. Wood, did you try to apportion his time between the Consolidated Gas Company and the other companies for whom he renders service as testified to by him?

24761

A. I did not.

Q. You did not do that with any of them?

A. I did not.

Q. Did you make any attempt to apportion the salaries of those in the general office between the gas business of the Consolidated Gas Company and that portion of their time devoted to the branch of the business other than the making and production of gas?

A. No.

Q. You found out that they had bonds and stocks, and a good deal of their time is devoted to taking care of and conserving the assets of the company?

24762

A. If you will divide your question so that I can answer it, I will answer it.

The Master: You found they had bonds and stocks?

The Witness: Yes.

The Master: Did you make any inquiry as to how much time Mr. Cortelyou spent in watching bonds and stocks?

The Witness: I did not.

Q. I do not see anything funny about it, do you?

A. Yes, I think it is very funny. I assume that their duties are in conserving the assets of the company.

Q. Their duties, what?

A. That their duties are to conserve the assets of the company.

Q. You concede that Mr. Cortelyou as president—

The Master: I do not want Mr. Teele's concession about it.

Q. But you did not attempt to apportion it?

The Master: He so answered already. Not allowed.

Mr. Chambers: Exception.

Q. Now, law expenses. You set up, did you, just exactly what you found in the operating ledger? 24764

A. In the law expenses I have included here one-sixth of the 1918 expenses plus the 1919 amount as shown on their books for the ten months, which is the estimate for ten months.

Q. In that is the expense in this very litigation, is it not?

A. Not that I know of.

Q. None of it?

A. None of it.

Q. Now the cost to distribute a thousand cubic feet of gas sold, 21.3512 cents, that is arrived at the same way as cost of production per thousand cubic feet, that is from the figures set forth in these schedules? 24765

A. It is a computation dividing $3,911,823.21 by the number of cubic feet of gas sold.

Q. Now, the renewals and replacements, on page 16, three cents per thousand cubic feet of gas sold, is that the way the company set it up, exactly that way? In other words, the figure of $549,647.71, is that the figure that the company set up for renewals and replacements for those two months?

A. It is not.

Q. Where did you get that figure from?

A. That is a computation of three cents per thou-

sand cubic feet of gas sold for the twelve months, not the two months.

Q. Then this figure $549,647.71, is for twelve months, is it?

A. For twelve months.

Q. How did you reduce it down to the two months?

A. I do not know what you are talking about, Mr. Chambers, when you asked me how I reduced it down to the two months.

Q. Isn't this page 16—haven't you set—didn't you intend to set up renewals and replacements for the
24767 two months, September and October, 1919?

A. In this figure?

Q. Yes.

A. They are included in this figure, yes.

Q. Why have you included twelve months in it?

A. Because this is a statement for twelve months, it is not a statement for two months.

Q. Where did you get the three cents from, the same place as you have testified heretofore?

A. Where did I get it from?

Q. Yes.

A. It is a figure that is used by the company.

Q. It is not one that you—you used it because the
24768 company used it?

A. I used it because it has been used in estimating.

Q. "Interest on Consumer's Deposits" is that the same that you have testified for the eight months' period? I mean you used the very same method, did you?

A. I used the same formula in arriving at the result.

Q. The same formula?

A. The same formula. I took the actual payments as shown by the company's books, and then adjusted

the balance between October 31st, 1918, and November 1st, 1919.

Q. The interest on taxes is by the same formula you used for the interest on taxes for the eight months' period?

A. Yes.

Q. Then this conclusion down here, "Total Taxes and Interest Applicable to Gas Business," is your deduction from the figures, is it?

A. It is my conclusion.

Q. The information on page 20, is that a summary? 24770

A. On page 20?

Q. Yes.

A. Page 20 is a copy of the company's return to the State of New York for the gross earnings for the year ending October 31st, 1919, and shows the amount of tax charged into their fiscal accounts for the calendar year ending December 31st, 1919.

Q. The real estate taxes, are those actual amounts paid out?

A. The real estate taxes, the schedule shows what I have taken. That is, I took the actual taxes for 1918 and took one-sixth of the total tax for 1918 as being applicable to the two months of October and 24771
November; I took the actual taxes for the year 1919 and took five-sixths of same as being applicable to the months January 1st to October 31st, 1919, and adding the two together I get the total applicable to this nominal year ending October 31st, 1919.

Q. And you have given the lot and block of the parcels you have included?

A. I have.

Q. As shown, I take it, by Exhibit 178?

A. Yes.

24772 Arthur W. Teele, Cross.

Q. Take Exhibit 390 for identification.

A. What is the title of that, please?

Q. Interest on Taxes, 1906 to 1917, inclusive.

The Master: There is no such exhibit in the case. It was some paper marked for identification that was given you in amplification of Exhibit 366.

Mr. Chambers: The Court does not allow us to ask any questions about that, or the figures contained in that exhibit?

The Master: I never said so. If you will tell
24773 me what figure on Exhibit 366 you have reference to, and what there is you want to point out or spread on the record as developed by the information given you by Mr. Teele, I will be very glad to let you do it.

Mr. Chambers: I want to find out if the taxes entered in Exhibit 366—if they were entered in Exhibit 366 in the year in which they were applicable—the interest on taxes, rather. Whether the interest on taxes shown in Exhibit 366 were in the year in which they were applicable.

The Master: Didn't you find out about it? What was the use of giving all the information
24774 and adjourning this case for days at a time? If you say there is something there that you want to get on the record, that either was or was not, I will let you point it out to the witness. I am not going to let you ask any other questions.

Mr. Chambers: Then I will ask a question.

Q. The interest on taxes which you included in Exhibit 366 for the years 1906 to 1917, inclusive, did it relate in some instances to taxes levied before 1906?

The Master: Why can't you ask the leading question? I take it your analysis shows it did: put the leading question to the witness, "Did it not?"

Mr. Chambers asks you whether it is not the fact that the interest charged in your Exhibit 366 for taxes of 1906 included interest on taxes of prior years?

A. It includes interest accrued during the lears as shown in the exhibit, on items which were due prior to that time.

Q. For instance, it includes—

A. I will modify my answer: Which remained unpaid during that time.

The Master: In other words, there might be taxes away back to 1912? 24776

The Witness: Certainly.

Q. It includes interest in one instance on taxes as far back as 1856. You can look at page 2, if you want to, of this exhibit for identification.

The Master: I do not see that, Mr. Chambers. Where is it?

Mr. Chambers: First line, charged to profit and loss.

A. I will look at the working sheets on this. There is a typographical error on this, I think.

The Master: What is the fact, Mr. Teele?

The Witness: I am informed by my assistant that there is a tax remaining unpaid—or at that 24777 time, back to 1856, real estate tax.

The Master: It is a tax sale, apparently?

The Witness: Yes.

Q. You set up the interest on taxes unpaid for whatever years they were unpaid, no matter how far back they ran?

A. I set up in this exhibit the amount of interest on taxes, as shown on the books.

The Master: No matter how far back they ran?

The Witness: No matter how far back they ran.

24778 Arthur W. Teele, Cross.

The Master: Which again illustrates what I have been contending for right along that with the opportunity afforded counsel it should be perfectly easy to direct the witness's attention to the point sought to be spread on the record, and which may be useful to the defendants.

Q. These items on page 2, at least are taken from the profit and loss account, are they not?

A. They so state.

Q. Is that true of all the items in this exhibit?

A. Where it says so.

24779 Q. All the items set up in this paper, Exhibit 300 for identification?

A. Where it says so.

Q. The schedule in which you set up interest on personal taxes, 1906 to 1917, inclusive, for 1906, for instance, in what year were these taxes levied, the personal property taxes?

A. I cannot tell you from the information before me.

Q. Can you tell for any of the other years, down to 1915?

A. Not from the information before me.

Q. What information would you need?

24780 A. My working sheets.

Q. You have not those here?

A. I will inquire and see if they are here.

By the Master:

Q. They have been accessible to counsel for the defendants?

A. They have.

Q. For the last two weeks, have they not?

A. They have; more than that. For the last month.

By Mr. Chambers:

Q. Will you give us the years in which the taxes were levied?

A. Mr. Moeran, have you our working sheets showing the interest on personal taxes as contained in Exhibit 366?

The Master: Go ahead with something else, Mr. Chambers, while we are waiting for that. Is the point that you want to make the fact that it includes taxes prior to 1906, Mr. Chambers?

Mr. Chambers: Yes.

The Master: How about that, Mr. Teele?

The Witness: It does.

Q. All of it?

A. All of what? 24782

The Master: Of what? It may or may not include some of 1906, may it not?

The Witness: There was a settlement made in 1915, which covered the personal taxes in the suit at that time, I believe.

Q. It runs in the same amount every year there, in the last column?

A. Down to 1915.

Q. Yes.

A. At which time there was a settlement for the personal taxes in dispute, February 15, 1915, as shown by journal entry 164 of that year. It shows the settlement made and the period to which it applies. 24783

Q. So all the interest there in the last column relates to taxes levied prior to 1906, does it not?

A. No.

Q. Not all of it?

A. Just a minute. It applies to interest on taxes, prior to 1907, because the settlement figure applied to 1907, of $46,000, applies against the personal taxes of 1907. The items shown in the settlement column apply against the personal taxes of the years opposite which they are set, leaving the amount standing after the deduction on account of the settlement as applied to the interest for each year, and the interest for each

year is made up of the unpaid personal taxes during that year. Not the personal tax of that year, but the unpaid personal taxes during that year.

Q. But the last column down to 1915, 1906 to 1914, relates to the personal property tax which antedated 1906?

A. Some of that was prior to 1906, and some of it was subsequent.

Q. Was not all of it?

A. There were unpaid personal taxes running down to the date of the settlement.

24785 Q. That is covered in the second column?

A. And the amount of interest accrued on all of those unpaid taxes, as shown by the company's books each year, is set out in the first column.

Q. Now, I am asking you about the amounts set up in the last column, Mr. Teele, 1906 to 1915, inclusive—whether they do not relate to interest on taxes which antedate 1906?

A. Just a minute until I look at the working sheets and see if I can tell you.

Q. Will you get out your schedule while we are waiting for that matter and turn to "Miscellaneous Rent Revenue," 1906 to 1917, pages 9, 10, 11 and 12.

24786 You say, "less six per cent on value of space occupied by tenants." Where did you get that six per cent from?

A. What do you mean, where did I get it?

Q. Yes, that is what I mean. Was that your idea of the six per cent?

A. Six per cent is the rate per cent which we have used in all deductions.

Q. You mean you charged the sub-tenant or the tenant the six per cent on the value of the space occupied by the tenant?

A. I do not know where we have.

Q. Isn't that what that is there?

A. No.

Q. What is that?

A. It says, "Less six per cent on the value of space occupied by tenants."

Q. Yes.

A. That is not charging a tenant six per cent. It is a computation made by us in which we deduct from the rentals six per cent on the valuation of the property occupied by the tenants.

Q. As a fair amount?

A. As a fair amount, six per cent being the legal 24788
rate of interest in this state at the present time.

Q. That is true of these other things, where that appears; that is true of the following pages 10, 11 and 12, is it?

A. Six per cent is the rate which we have used.

Q. And that is the rate the company used?

A. That is the rate which we have used.

Q. By "we" do you mean the Consolidated Gas Company?

A. No, I mean myself, in making up this statement.

Q. The company did not use it?

A. The company has made no such deductions in 24789
its accounts.

The Witness: I will answer that question if you wish in regard to the interest on personal taxes.

Q. The question was, in the interest on taxes for 1906 to 1917 inclusive—

The Master: 1906 to 1914.

Q. Yes, to 1914 inclusive, of $26,737.12, relates to interest on taxes which were levied and antedated 1906?

A. The taxes antedated 1906; the interest is the amount accrued during the years as stated.

The Master: Next question.

Q. Have you before you Exhibit 397 for Identification?

A. The title of which is what?

Q. The title is, "Federal Income and New York State Excess Dividend Taxes."

A. I have it.

Q. Down at the bottom you have "Year 1909 Paid in 1914." Do you mean that the amount of $16,998.30 was paid in 1914, and that you moved it back in to 1909?

24791 A. Yes, sir.

Q. Because it was applicable to that year?

A. Yes, sir.

Q. And is that so for all the amounts in the second column, where it says, $11,521.88, $18,379.73 $15,757.01, $4,839.92 and $1,225.46?

A. Yes, the notes at the bottom of the sheet apply to the items in the second column of additional payments.

Q. Will you take the schedule, "Rental of jointly used facilities"?

The Master: What is your question, Mr. Chambers?

24792 Q. The items, "Small mains in the Bronx, Central Union Gas Company," is that the same property, the same mains throughout this exhibit when you speak of it as "small mains in the Bronx"—is it the same?

A. I believe they are the same mains with some slight changes.

Q. What slight changes?

A. I have not before me the data which shows what the changes are.

Q. On the second page, "Coke storage facilities," do you mean the same property throughout this exhibit?

The Master: Just one minute, Mr. Chambers. I see in these figures which you gave Mr. Chambers that for 1906 it is on the annual basis of $3,766.55, and that in every year after that it was $42,766.51. The changes that you refer to must have been between 1906 and 1907

The Witness: As I recall in that particular year there was some small change.

Q. Coke storage facilities—do you mean the same thing throughout the exhibit, the same property as on page 2?

The Master: I see those figures change. 24794

The Witness: Where the investment amount changes the facilities change.

Q. Did you do anything to check up what facilities those were?

A. What do you mean check up what facilities those were?

Q. Do you know what facilities at 21st Street were used in 1907, say the first item which appears here, what facilities you had there?

A. This statement is a statement of rentals collected by the company for the use of facilities as stated in the bills.

Q. What facilities did they collect the rent for? 24795

A. The facilities are set out here, and are set out, set out in the bills rendered to the companies using the facilities and paying rental for them.

Q. What facilities were they at 21st Street? Were they the same throughout the period?

The Master: They could not have been.

Mr. Chambers: That is what I am asking.

The Master: In 1907 it was $27,000, the same in 1908, and in 1909, and every other year it was $46,000 odd. In the 42nd Street plant it was $84,000—

24796 Arthur W. Teele, Cross.

Mr. Chambers: They might have increased the rent.

The Master: They might have increased the rent.

The Witness: They did increase the rent.

The Master: 111th Street station was $10,000 in 1907, $41,000 in 1908, and then went to $139,000, and stayed there at that figure. Do you mean to say they increased the rent from $10,000 to $139,000? Would you say that was an increase in rent, or additional facilities?

24797 The Witness: It is both.

The Master: Next question.

The Witness: The rents were increased, and I assume the facilities were increased because the amount of investment on which it is charged is increased.

The Master: You don't know, do you?

The Witness: I don't know whether they increased the rent for the same facility or not.

Q. And you don't know what pieces of property were included year by year?

A. I do not now recall whether they did or not.

Q. I ask you if you checked up to see what pieces
24798 of property were included that they were renting?

A. The report made by Mr. Brundage, which is the basis of these rental charges, sets forth the facilities that area used in the various periods and the rentals to be charged, and this statement is a tabulation of the rentals collected.

Q. The report of Brundage that you have spoken of heretofore?

A. Yes, sir.

Q. A written document?

A. It is in evidence in this case I believe.

Q. How did you get out the investment figures in the first column on page 2 of this exhibit for identification?

A. My recollection is that the investment figures in most cases are stated in the rental bills as rendered.

The Master: They don't appear on Exhibit 366, do they?

The Witness: They do not.

Q. Did you take those figures, or did you determine the investment average?

A. As set out here we took the figures as shown on the bills, and referred to the—just let me refer to my 24800
working sheets a minute, if you have them, Moeran.

Q. The quetsion is whether you took those from somebody else, and if so who, or did you work it out yourself?

A. You are asking particularly about which? Coke storage facilities?

Q. I am asking you about all of the property set forth in this paper, "Rental of Jointly Used Facilities" from beginning to end, in this first column, averaged on an annual basis?

A. The coke storage facilities are based upon the—

Q. I didn't ask you about that, I was asking about all of them.

24801

The Master: But I am. How about coke facilities?

The Witness: They are based upon the report of Mr. Brundage to which I have previously made reference, and they are based further upon the report of Mr. Wood to which I have previously referred, and which was authorized by action of the executive committee of the gas company, the date of which authority I have not in mind at the present time.

Q. You took then the investment as given to you, for these pieces of property, from others, as you have indicated?

A. What do you mean I took them from others?

Q. You didn't ascertain the investment value.

A. Only as set forth in the report made by officials of the company.

Q. You took it from these reports?

A. Yes, sir.

Q. Somebody else?

A. Yes, sir.

24803 Q. That is true all the way through, isn't it?

A. Yes.

Q. Now, this, "Deduct 6% on investment," that was your six per cent, or did the company set it up?

A. I set it up.

Q. You took that as a fair rate?

A. Yes, the legal rate of interest in this state.

Q. Have you Exhibit 389?

A. The title is what?

Q. "Real Estate Improvement Owned and Used in the Gas Business, 1906, to 1918, inclusive." Will you please tell me where you obtained these items under the heading, "January 1, 1906," the first five

24804 items?

A. Defendants' Exhibit "W." They are also the valuations—

Q. You obtained that from Defendants' Exhibit "W"?

A. They are shown on Defendants' Exhibit "W."

Q. In this case?

A. Yes, sir.

Q. What exhibit is that? Is that the only source?

The Master: You started to say "and also," didn't you?

Mr. Chambers: Why has the witness got this Defendants' Exhibit?

The Master: This is a paper that belongs to the other side that you marked as an exhibit.

Mr. Chambers: We ought to have it so we could make copies of it.

The Master: It is the complainant's paper.

Mr. Chambers: You mean that we cannot have our own exhibit in order to make copies of it?

Mr. Ransom: This was the first paper which copies were furnished to the defendants.

Mr. Chambers: I don't think the witness ought 24806
to be carrying around original exhibits in the case.

The Master: It is in the custody of counsel for the complainant. If he has given it to Mr. Teele for use here, he had a perfect right to do it.

Mr. Chambers: I am not—

The Master: That is precisely what you have said.

Mr. Chambers: I am saying that it should now be placed in the custody of counsel.

The Master: I will take care of that.

Q. What else did you use besides this exhibit?

Mr. Ransom: I object to the question as too 24807
vague.

The Master: No.

Mr. Ransom: Used for what?

The Master: For these five items. Where else did you get it, if anywhere?

The Witness: The valuations set down here are the valuations placed upon these properties by Wheelock in his appraisal of the gas company's property in 1906.

Q. And you obtained it from Wheelock's testimony?

A. Yes.

Q. Now, your deduction of withdrawals, are these all the withdrawals that you found relating to real estate improvements other than plant, 1906 to 1918, inclusive, owned and used in the gas business?

A. So far as I now recall they are.

Q. Now, turn to page 3, and I call your attention to items, "Transferred to Furniture and Fixtures, $275,958.94," and "Extraordinary Exp. Construction New Building" transferred to "Renewal and Contingency Suspense $488,378.89," and ask you what you call this?

24809 A. I do not know. I do not understand your question, what do I call that.

Q. Are those withdrawals, those two items I have just mentioned?

A. The item that is transferred to furniture and fixtures is not a withdrawal.

Q. How about the extraordinary?

A. It is a transfer of expenditure which was included in the expenditure charged to the construction of the new building, and which was subsequently considered as furniture and was deducted from the amount shown in the ledger accounts and charged to the furniture and fixtures account.

24810 Q. How about the next one?

A. The amount of extraordinary expenditures construction new building transferred to renewal and contingency suspense is an amount which was written off the record because of the construction of the new building by the company in 1915, and reduces the record cost of the construction and was charged by the company to the renewal and contingency suspense account.

Q. And that was not a withdrawal?

A. It has the effect of a withdrawal, by writing down the value of the construction.

Q. Is it a withdrawal or is it not? Is it plant withdrawn from service?

A. It is withdrawal of charge, yes.

Q. Is it withdrawn from service?

A. It is not a physical withdrawal, it is a withdrawal of the charge.

Q. It is not plant withdrawn from service?

A. No; it does not purport to be.

Q. Now, page 7 of this same Exhibit 389, now take the item, "Paving Roadway 1908." Do you see that?

The Master: Yes. What about it?

Q. Now, why didn't you include that in the sched- 24812
ule entitled "Real Estate Including Improvements other than Plant used in the Gas Business December 31, 1918," which covers all of the period from December 31, 1905 to December 31, 1918 furnished the defendants?

A. Why didn't I include it in what?

Q. Why didn't you include this addition that I have just called your attention to in the additions which you gave us heretofore.

A. If you will allow me to look at the schedule which you have before you, of which I haven't a copy here, I will try to answer it. If you will turn to page 13 of your own schedule, you will find the item. 24813

Q. Under what heading?

A. "Property East 110th to East 111th Street Improvement," 4th item from the bottom.

The Master: What is the title of this?

Mr. Chambers: "Real Estate, Including Improvements Other than Plant used in the Gas Business December 31, 1918."

(Discussion off the record.)

Q. It is not in the first schedule I called your attention to. Will you say—

A. (Interrupting.) You say it is not. I have not looked at it to see.

Mr. Ransom: Is it or is it not in Exhibit 389, Mr. Chambers?

Mr. Chambers: We are satisfied it is not in the schedule that I have asked him about, but it is in 389, but not in the other one. So we believe —I was asking why it was not, and there are a lot more like it. You don't know whether it is in it or not, do you?

The Witness: I do not now recall, without going back and informing myself what changes were made.

24815 Q. There are a slew of items like that that we would like to know about?

A. No, there isn't a slew of items or anything of the kind.

Q. What?

A. There isn't a slew of items or anything of the kind.

Q. There are ten under this one piece of property at 110th Street, ten items is what I meant by a slew?

The Master: Well, look into that, Mr. Teele, and I will declare a recess while you are doing it.

The Witness: The schedule to which Mr. Chambers has referred was prepared under the

24816 theory of tying the thing up to the court valuation, and by direction of counsel we prepared another schedule, and without having the original schedule before me and checking the items and seeing exactly what was done, I cannot at this time say. I have sent to my own office to get a copy of the original schedule which I believe is there, and when it is in hand, I will make an investigation and report. I cannot say at this time.

Q. On Page 9 tell us where you got the figure, or how you obtained the figure for buildings, $36,000?

A. From the 1909 ledger, Folio 3.

Q. You have set forth there land and buildings altogether as $58,000. How do you separate the buildings from the land?

The Master: You say on Ledger 3 it has $58,000, is that the item?

Q. Yes, sir. As I understand, they bought the buildings and land together, and I ask how did he pick out the building from the land, is what I want to know?

A. Mr. Moeran, can you give me our working sheets which will furnish me any information on that item?

(Witness consults with Mr. Moeran.) 24818

A. (Continued.) I cannot tell at this time, Mr Chambers.

Q. Now, the total cost of that property as shown by the books is $58,312.50, and including the expenses—

A. I cannot tell at this time, Mr. Chambers, how we made the separation. I expect it was based upon the assessed valuations.

The Master: In other words, you deducted from the total of $58,000 the assessed value of the land and got the balance?

The Witness: And got the total. I expect that is the way that we did it, but I do not want 24819 to say positively at this time that that is so.

Q. Now, the next item?

A. $58,000 was paid for the land and buildings, as stated, and we have made a separation as between land and buildings, and I haven't the underlying data before me.

Q. You mean that you did that?

A. I mean that I did that.

The Master: Is it possible that you made some inquiry of some department official and got the figures from him?

24820 Arthur W. Teele, Cross.

The Witness: I exhausted all the information that was available. I either went back to the original papers which may have disclosed it, or I went back to the assessment for taxes.

The Master: You do not remember?

The Witness: I do not remember, no.

Q. Now, the next items, expenditure for years of 1910, 1911, 1912, 1913, 1914, 1915 and 1916, to what accounts are those charged on the books?

The Master: This tabulation refers you to the ledger folios. Why don't you look at them and

24821 see what account they are charged to? The books are right here.

Q. Can you say, Mr. Teele?

The Master: I won't allow the question.

Mr. Chambers: Exception.

The Master: You have the books here. Open the books and look at them.

Q. Where does it appear in the balance sheet?

The Master: How am I interested in the balance sheet?

Mr. Chambers: I should think you would be.

The Master: What balance sheet have I got before me? There isn't any balance sheet be-

24822 fore me.

The Witness: None before the Court.

The Master: Question not allowed.

Mr. Chambers: Exception.

Q. On page 10, the withdrawals there set forth, in Exhibit 389, did you obtain those withdrawals from the books?

The Master: Exhibit 389 for Identification?

Mr. Ransom: No, in evidence.

The Master: Is it in evidence? All right

A. From the places indicated on the left-hand side of the sheet.

By the Master:

Q. The first item does not indicate anything, Mr. Teele?

A. The 1912 ledger.

Q. But the folio is blank.

A. The amounts, of course, used are the amounts which are shown on the other side of the schedule, the amounts at which the property was taken into the schedule at the beginning.

Q. Mr. Chambers wants to know where you find that first item?

A. It comes from the 1912 ledger. 24824

Q. The first item of $43,000, where did you find that?

A. The ledger folio on which these items are credited I have not here.

By Mr. Chambers:

Q. The ledger folio in the first item?

A. The entry retiring the improvement appears in the 1912 ledger. A folio I have not set down on this schedule; I will see if I can find it for you.

Q. It is the same item as appears on the first page, is it not?

A. It is.

Q. And the next one? 24825

A. The same way.

Q. The $4,000 is the same one as appears on the first page?

A. Yes.

Q. The rest of them—did you just take the rest of them, below these two items I have been asking about, from the books?

A. I took them from the books and the entries referred to in the ledger accounts.

Q. Did you do anything at all to ascertain the reasonableness of the withdrawal amounts?

A. These amounts are withdrawn at their cost or record value, as indicated. Where such a cost or record value is not indicated they have been withdrawn on estimates made by the engineer.

Q. For instance, the last two are on estimates made by the company's engineer?

A. Yes.

The Master: The last two on page 10?

The Witness: Yes.

Q. Whose estimate, Mr. Aldrich's?

A. They are made over the signature of the chief

24827 engineer.

Q. Some written statement furnished to you by the chief engineer?

A. The entry is approved, as I recall, by the chief engineer.

Q. That is Mr. Bradley?

A. W. Cullen Morris, chief engineer of construction.

Q. Take the last item on page 13, 444 West 159th Street. There are two items there appearing, $1,561.54 and $950. Were these amounts credited to the cost of this property?

A. Yes.

24828 Q. You are sure about that, are you, Mr. Teele?

A. They are in the ledger at the folios stated. That is the only place I could get them from, the company's accounts.

Q. The 21st Street meter repair shop, the items on the same page 13, $215 and $98—was that credited to the cost of that piece of property?

A. Yes, and it is also debited.

Q. You are certain about that?

A. Yes.

Q. That it was credited?

A. Yes. If you will look on the other side you will see where it was added—page 4.

Q. Have you on cost of production for 1906 to 1917 inclusive, computed the amount of generator coal for each of the years which is included in Exhibit 366?

Mr. Ransom: Objected to.

The Master: The question is not allowed as already answered.

Q. Have you included the cost of the generator coke for each of those years which is included in your cost of production, Exhibit 366? 24830

The Master: Has he included it?

Mr. Chambers: Yes.

The Master: I will allow that.

A. I have included the accounts of cost of production as shown by the ledger. I have not analyzed those accounts, so that I can state what items are charged in those accounts.

Q. That is, you cannot say how much generator coal was used for each year?

A. I cannot.

Q. Nor how much generator coke was used?

A. I cannot.

Q. Nor how much boiler fuel—coal and water gas tar? 24831

A. No.

The Master: No further questions are necessary. He says he cannot tell as to any of these items.

Q. You cannot tell us as to any item going into cost of production, as you set it forth in Exhibit 387?

A. I cannot give you any further detail than is set forth in the cost of production given you.

Q. Because you did not make it, you mean, or you did not ascertain those amounts?

A. I did not make any examination with a view to furnishing any further detail.

Q. None of your men have done it?

A. I have answered the question.

The Master: The question is not allowed.

Mr. Chambers: Exception.

Q. I ask the complainant or the witness to furnish us the cost of production figures, the same as shown on Exhibit 387, for the years 1907 to 1917, inclusive.

24833 The Master: How long will that take, Mr. Teele?

The Witness: I should say three months.

The Master: Your request will not be granted.

Mr. Ransom: And the figures are given in the reports to the Public Service Commisison—the details.

The Master: The books are in evidence and can be analyzed, and undoubtedly have been, by the experts for the defendants.

Mr. Chambers: They have not yet.

The Master: You have had six months to do it in, more or less.

24834 Mr. Ransom: Those statistical reports, or those statistical studies which your Honor over our objection required us to give to the defendants, contain this in even greater detail than is set forth in the Public Service Commission report.

The Master: Next question.

Mr. Chambers: I only bring this up to show that the Court has directed us to do that, and if we had the benefit of their figures it would expedite it. Also it shows the length of time it takes to do it, and we say that this case cannot be properly presented without that information.

The Master: Let me have that Exhibit W.

(The Master takes the exhibit and hands it to the witness.)

The Master: Is that all, Mr. Chambers?

Mr. Chambers: I ask that the witness take Exhibit W for the purpose of making copies of it.

The Master: I understand you have copies of it, furnished to you by the complainant.

Mr. Chambers: I do not so understand. Mr. Ransom says that. If he will show me the paper or tell me what it looks like we will look it up. 24836
What does it look like?

The Master: You have had the paper in your hands for the last half hour, Exhibit W; you have just handed it back to me. You and Mr. Maltbie have had it in your hands for the last half hour and ought to know what it looks like.

Mr. Chambers: You misunderstood me. I asked him what the copy he furnished us, as he says, looks like.

The Master: I should say it looked like Exhibit W.

Mr. Chambers: I ask that Exhibit W be delivered to us for the purpose of making a copy 24837
of it.

The Master: I will not do it.

Mr. Chambers: Exception. I say on the record I do not recall having any copy of it.

The Master: I shall take Judge Ransom's statement that he gave you copies of it.

Mr. Chambers: And if we find he is in error—

The Master: Then he will have to give you copies of it. Mr. O'Brien, have you any questions? You know this cross relates only to Exhibits 366 and 387. This subject has been pretty

thoroughly covered, and I do not think there is much I am going to let you ask.

Mr. O'Brien: There you are again, your Honor, throwing a hedge around me when I come to examine the witness.

The Master: If you have anything new that will help this case, I am going to let you ask it. If you start going over the ground Mr. Chambers asked about, I am going to stop you, and I am not going to let you get away from these exhibits.

24839 Mr. O'Brien: I appreciate what is in your Honor's mind, and I am going to try to make my record as expeditiously as I can. Assuming that you have certain ideas as to rulings, and holding to them, the proper thing to do is to make the record and save as much time as we can under those conditions.

Cross-examination by Mr. O'Brien:

Q. Will you tell me, Mr. Teele, when you first began to prepare Exhibit 366, how many men you used, when they began their work, how many were engaged in doing the work throughout the period, and when

24840 you finished?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Will you tell me in brief—in one answer if you can—to what extent, and whether you went outside the operating ledgers for the years 1906 to 1917, inclusive, to tabulate the figures or make any adjustments on the exhibits that you prepared therefrom?

The Master: The question is not allowed. He has answered that before.

Mr. O'Brien: I would state, your Honor, that he has mentioned some matters and I want to find out if they embrace all.

The Master: Not allowed.

Mr. O'Brien: He has referred to oral information from engineers and employees of the company, that he got, and I want to have a complete statement as to what those sources of information were.

The Master: The ruling stands.

Mr. O'Brien: Exception.

Q. When you say you made up from the tabulation of the books—I am referring particularly now to what has been termed "Cost of Production" delivered to the defendants' representative on December 6, Saturday, December 6th—did you include any books besides the operating ledgers? 24842

The Master: Not allowed.

Mr. O'Brien: Mr. Teele, you did not understand the Master:

The Master: I said not allowed.

Mr. O'Brien: Not allowed?

The Master: You misunderstood me.

Mr. O'Brien: Exception. May I say in that connection, your Honor, that there has not been a definite statement made by the witness?

The Master: I think it is sufficiently covered. 24843

Mr. O'Brien: The books offered in evidence as to these years were only the operating ledgers, and I do not recall in any of the record a statement by the witness as to what he meant by books when he said, "I just took the tabulations from the books."

The Master: The ruling will stand.

Mr. O'Brien: Exception.

Q. Did you for any of those years refer for sources of information or for purposes of verification to the reports made to the Public Service Commission?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Are we to assume from what you said in your testimony with regard to Exhibit 30[redacted] and the schedules you have prepared in connection therewith that there was no attempt made to go into the underlying data to verify the figures in the operating ledger from the underlying data and to verify the correctness of the allocations of various amounts in the operating ledger or in any of the underlying data?

The Master: Same ruling.

24845 Mr. O'Brien: Exception.

Q. As to these years, did the company place at your disposal and did you use any of the underlying data?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you refer to the pay rolls for the verification of very many entries in the operating ledger covering this period for the purpose of verifying the items that covered labor?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you make any attempt and did you produce an analysis of the distribution expenses and production expenses of the years in that period, 1906 to 1917, that would show all of the expense of every kind involved in the appliance business and all the receipts, and determine whether or not there was any profit in the merchandising business for that period?

24846

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you find any record, any account, any schedule, any paper, that had segregated for that period, 1906 to 1917, all of the expenses involved in the handling of appliances and the receipts therefrom?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Can you state briefly what accounts you took from the operating ledgers of the period mentioned to make your tabulation of what you call "Cost of Distribution," and what account you excluded?

The Master: Same ruling.

Mr. O'Brien: Exception.

The Master: I should imagine it would be clear to you, Mr. O'Brien, that I am not going to permit any questions as to how he got something, or where he got something, or what he didn't 24848
have before him, the method used in the preparation of his tabulations, my theory being that that is sufficiently covered.

Mr. O'Brien: Well, I have in mind your Honor's ruling, and I am not going needlessly into detail. I seek now to make the record so clear—

The Master: I have let you ask about twenty questions to bring out your point.

Mr. O'Brien: Exception.

Q. Did the company give you any directions, oral or written, as to the accounts that you were to include in your tabulation of the costs of distribution, cost of 24849
production—did they tell you where to draw the line?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Was that collection of totals that you took from the operating ledger to make your tabulations confined to matters that you yourself determined to be accounts covering costs of production and costs of distribution, or was a direction given you by some representative of the company which you followed in making it up?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Mr. Teele, when you say you made your tabulations for these years for these various expenses of the company, did you just take the final figure at the end of December for each year in the accounts referred to, or did you take the totals for each month and add them up to get the total for the year, and then take the totals of the years?

The Master: You can answer that.

A. The total for the year. I was not concerned with monthly totals.

Q. Was there any verification of the total for the
24851 years made by you?

The Master: Question not allowed.

Mr. O'Brien: Exception.

Q. You have on page 26 of the Cost of Distribution data for 1906 to 1917, you have there an item, "Repairs of Buildings Elsewhere." What does that mean?

A. That is the title of the account.

Q. You mean that account carries under those titles for items relating to general office, F. A. Department, 18th Street Stable, etc.?

The Master: Question not allowed.

Q. You have as the first item of Repairs of Build-
24952 ings Elsewhere a reference to folio 875 of the Ledger, and you have seven items on this page 26, involving various figures, with a total of $17,510.17. I call your attention to page 875 of the Operating Ledger, and ask you where you find that account and those figures?

Mr. O'Brien: The witness is examining the book, your Honor. I ask him now to abbreviate this matter, whether there is any account of that kind on page 875 of this ledger.

The Witness: There is not.

The Master: There is not?

The Witness: There is not.

The Master: What account is there on page 875?

The Witness: I assume that there is a typographical error.

The Master: That does not answer my question. What is the account on page 875?

Mr. O'Brien: Cocks and Connections. Your Honor will see the necessity of my asking this witness about how much time they put on this work.

The Master: No, the importance of cross-examination is to show that the work is not correct, and this is the way to do it. It doesn't make any 24854
difference how much time he spent on it. Point out the errors.

The Witness: The account is on page 675 instead of 875. It is a typographical error in printing the schedule.

The Master: Your attention, Mr. O'Brien, is called to that very paper, page 25, the beginning of the item, "Repairs of Buildings Elsewhere," where it is stated correctly as 675.

Q. I call your attention, Mr. Teele, to the total for this year of this account on page 675, and ask you what that total is.

A. The total of the account appearing on that page 24855
is $7,185.95.

The Master: Yours is seventeen thousand.

The Witness: Not on that page, and not under this title. The title on the schedule to which I assume you are referring is, $17,310.17. That is made up of the account appearing on folio 675 of the ledger, and also the account appearing on folio 663 of the ledger.

The Master: That appears upon the schedule itself?

The Witness: Yes, it shows very plainly.

24856 Arthur W. Teele, Cross.

Q. You did not take this $17,310.17 from the books as such, that particular figure?

A. I did not pretend to.

Q. Then your view of it is that this figure $17,310.17 includes not only the account tabulated on 675 of the ledger, but that on 663 of the ledger?

A. It does.

Q. Are the totals of either of these groups of accounts made in the books?

The Master: What was that?

Q. Are the totals of these two groups of accounts
24857 named in the books, are they carried in the books as totals, or did you make them up?

The Master: The question is not allowed.

Q. Have you any working papers that show these tabulations for each of these separate groups of accounts?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Will you say why you threw those two groups together?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did your men make the two marks on these ac-
24858 counts back over those years in the operating ledgers?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Certain items?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Were these two dashes made with blue pencil made by your men?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. I call your attention to page 714 of the operating ledger in 1917, and particularly to the item re-

ferring to that on page 7 of this schedule of cost of distribution for the period 1906 to 1917 inclusive—

The Master: What item are you referring to?

Mr. O'Brien: The item, 111th Street, Street Department.

The Witness: On what page?

Q. Page 7.

The Master: What item?

Mr. O'Brien: I am calling attention to an item there of $190,241.60.

Q. I will ask the witness whether he made any examination into that account to determine whether or 24860
not the items that were included in it were part of the Complainant Company's work, what relation it had to other corporations, and whether or not any of that work was actually done.

The Master: Not allowed. The witness has said he did not analyze any of these accounts and doesn't know anything about them except what they show from the books.

Mr. O'Brien: Exception.

Q. We have here a total on page 714 of the ledger, in red ink, of $190,241.60. I call your attention to this page, and ask you if there is any amount brought forward from the other pages to this account? 24861

The Master: Question not allowed.

Mr. O'Brien: Exception.

Q. Mr. Teele, what disposition did you make of these pencil figures that are included in this amount here, $190,241.60?

The Master: Not allowed.

Mr. O'Brien: Exception.

Q. Are there not on this page several penciled amounts inserted to make up the total of $190,241.60?

The Master: Not allowed.

Mr. O'Brien: Exception to all these rulings of the Master.

Q. In any of these accounts in these operating ledgers from which you took the total figures from December 31 of each year, did the Company make a practice of carrying forward on each page and inscribed in ink the totals of the accounts on the previous page where the accounts run over a number of pages?

The Master: Not allowed.

Mr. O'Brien: Exception.

Q. Did you as to this account here add up the totals for the year of each of the several columns entitled "Fitting Repairing Etc 1," entitled "Lighting Ex-
24863 tinguishing and Cleaning, 2," "Inspecting 3," Pipe Fittings, Etc. 4," "Repaving 5," Sundries 6," to determine whether or not the total debit inscribed in the next column was a correct addition of what went before it?

The Master Not allowed.

Mr. O'Brien: Exception.

Q. Did you, where the operating ledgers from which you took your totals showed intercorporate relations with affiliated companies, consult any of their records to determine whether or not these entries were correct?

The Master: Same ruling.

Mr. O'Brien: Exception. Your Honor will
24864 perceive that I might get some of these answers in a brief statement of the witness as to whether he took the final figures at the end of a year, without going to any other source?

The Master: I won't allow any other questions as to the method of preparation of this schedule.

Mr. O'Brien: Exception. I call your attention, your Honor, to the fact that in this particular account there are various entries of payroll, without any reference to where the payroll comes from or what particular payroll it was, that are set down on various dates, and I call your atten-

tion to the fact that there are a great many accounts that have to do with affiliated companies, and I call your Honor's attention to the fact that there are various unexplained items under the title Sundry Debtors. For purposes of explanation, anaylzing, verifying and allocating, the witness of necessity would refer to other books than the operating ledgers for the given years.

Q. Mr. Teele, do you know whether the underlying data for these earlier years have been preserved by the Company by which some verification might be made of the figures in the operating ledgers for those 24866
years?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Calling your attention to page 492 of the Operting Ledger for 1907, to which you make reference on page 6 of Distribution Cost Schedule, under an item of $349,273.11, I ask you whether you disregarded entirely the various pencil figures that have been incorporated in this account between the figures placed in ink?

The Master: I won't allow it.

Mr. O'Brien: Your Honor, here is something which on its face, you have received this book in 24867
evidence, and here is something that on its face calls for an accountant offering in a court of justice schedules of account, to pause and make some explanation, make some investigation, and I submit that my question is perfectly proper in determining the reliability of these figures.

The Master: I won't take it.

Mr. O'Brien: Exception.

Q. Do you know when, Mr. Teele, the title of this account "New Business Expense, General Office," was changed with the title "New Business" stricken out?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Do you know whether this account had anything to do with new business?

The Master: Same ruling.

Q. Did anybody give you instructions as to why you should incorporate this particular amount in distribution expenses for this year?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Can you say whether the various items making
24869 up this total of $349,273.11 did not involve many matters not chargeable to the gasmaking industry?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Was there any attempt made by you to go into any of the items leading into this account to determine whether or not the total figure I have just referred to was properly enterable under this schedule as General Office Expense?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Can you say why you included in this item General Office Expense an amount of $22,500 entered
24870 here as General Suspense Gas Rate Appeal?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Can you say whether or not any part of that item I have just referred to is subsequently or at any other place taken out of this amount of General Office Expense and charged up to some other account?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Now, can you say that that same item of $22,500 is not duplicated in some other item that you have incorporated in the figures under the title "Cost of Distribution" in the period I have mentioned?

The Master: Same ruling.

Mr. O'Brien: Exception. Now, your Honor, right on that point I want to drive home this thought to you, and that is this, that the witness said that "I did not go into these figures, I made my tabulations from the books except that there were certain adjustments of profit and loss that I made, so that they would be placed in the proper years." Now, I call his attention to an item of that kind that has been incorporated in a particular item in this expense account of $349,273.11 and ask him whether or not he has readjusted that 24872
in any other way to avoid duplication? I think that is perfectly proper.

The Master: I won't take it.

Mr. O'Brien: Exception.

Q. Did you make any attempt in setting forth your readjustment of those items in profit and loss for the several years in the period in question covering certain matters that you say should be distributed over the several years, to go through all the accounts to find out what figures should be thus adjusted, or did you confine yourself solely to certain figures that you found in the profit and loss account?

The Master: Same ruling. 24873

Mr. O'Brien: Exception.

Q. I call your attention to an item on page 492 of the Operating Ledger for 1907, entitled "C. G. Burgoyne Gas Rate Appeal, $246.60," and ask you if that figured in any of your adjustments taken from the profit and loss column and spread over several years?

The Master: I won't take it.

Mr. O'Brien: Exception.

Q. Will you say the same thing as to other expenses paid to Mr. Burgoyne?

The Master: Same ruling.

Mr. O'Brien: Exception:

Q. Can you explain what the meaning is of this account "New Business" shown on page 6 of this schedule, referring to 491 of the Operating Ledger for 1907, the amount being $75,924.26?

The Master: Same ruling.

Q. Do you know whether or not it was designed to have that considered as a general office expense?

The Master: Same ruling.

Mr. O'Brien: Well, I am bringing out, your Honor, the confusion of these accounts.

The Master: I do not see that you are bringing
24875 out very much. I have not allowed a question in the last fifteen minutes.

Mr O'Brien: Exception:

Q. Mr. Teele, will you explain why you set down on page 17 of this Cost of Distribution, under the item "General Office Supplies and Expenses," $179,627.20, while the book shows a total of $172,736.10 on page 954 of the Ledger?

A. The book shows what?

Q. The total of $172,736.10.

A. The book does not show anything of the kind.

Q. What does the book show?

A. $179,627.20.

24876 Q. Will you say whether or not that does include $111,945.91, charged up to Auto Suspense?

The Master: Not allowed.

Mr. O'Brien: Your Honor, I am endeavoring to bring out just the absolute unreliability of these figures and their worthlessness in this case.

The Master: I think you have asked enough questions to indicate what my attitude is about them.

Q. You have taken, then, the total at the end of each year for these several accounts you have referred to in your schedule, irrespective of what the page be-

fore you might say as to the items that went in to make up that total?

The Master: Not allowed.

Mr. O'Brien: Exception.

Q. Will you say, Mr. Teele, why you did not exclude from this total of $179,627.20 an item of $104,888.01 entitled General Suspense, Expenses of Repayments 80 Cent Gas Account?

The Master: You can answer that.

A. Why I did not exclude it? Because it is included in the total of the account.

Q. Why didn't you take that amount out and allo- 24878
cate that as you say you did items in the profit and loss account, to the years to which it might belong?

A. I have not undertaken the allocation of any amounts charged in these ledger accounts, other than those amounts in profit and loss.

Q. Can you explain that to us? Was it a direction from Mr. Carter or somebody representing the complainant?

A. No, the schedule Exhibit 366 as prepared is just what it purports to be; it is a tabulation of the accounts as shown by the books.

Mr. Teele, do not try to—let us get along together on a murky day. 24879

A. It is up to you whether we get along together.

Q. I have asked a question; won't you give me an answer?

A. I have given you an answer.

Q. Is that the best answer you can give me?

A. Yes, that is the best answer I can give.

Q. Did anybody tell you to go through all these accounts in the operating ledgers from 1906 to 1917 and gather together all of the items charged up to a particular year, which should be spread over a number of years, and allocate them to those years?

A. No.

Q. Who told you, then, to confine your distribution allocating to only those items in profit and loss?

A. It was determined after a conference with counsel.

Q. Did Judge Ransom so advise you?

A. I think I made the determination finally as my suggestion of what should be done in the preparation of Exhibit 366.

Q. Can you not tell us the reason, so we will understand it, why that distribution was confined to the items in the profit and loss account?

24881 A. Because it was intended to show just exactly what it does show, a tabulation of the accounts as shown by the books.

Q. Why did you have the conference and when did you have it?

A. I don't recall. I have had many of them.

Q. We are speaking about a specific conference; do not wince under the question.

A. I am not wincing.

Q. Tell us when you had the conference?

A. Do not accuse me of wincing. I will not wince at anything you can say to me.

Q. When did you have the conference?

24882 A. Between the 1st of January and the 31st of October, 1919.

Q. Was it before or after you put in the exhibits in the early part of the case?

A. I do not know whether it was before or after.

Q. Was this to correct something else in the exhibit?

The Master: Was it what?

Mr. O'Brien: Taking figures out of the profit and loss account and allocating them to such years as he thought they ought to be allocated to.

The Master: Was that done in order to hide something else somewhere?

A. It has nothing whatever to do with anything else; it is simply a plain tabulation of the accounts as closed.

Q. Mr. Teele, will you tell me now why you did not go through the accounts for each year of the period we have referred to and take out all of those items set up in the expenses of a special or particular year which should be spread over all the years, and distribute them the same as you did some of the items in the profit and loss account?

A. One reason, and the main reason, for not doing such a thing would be that it would mean the examination of every item of expenditure from 1905 to 1918 24884
and would take months to prepare.

Q. And how many men?

A. I have not made an accurate estimate of that.

Q. Well, a large staff? Tell me approximately.

A. I would not undertake to estimate it.

Q. Would it take a large staff of men?

A. It would depend altogether—not altogether, but I would say there are various conditions entering into the time it would take, such as the available information, the men available to do the work, their familiarity with it and so forth—and many other things.

Q. It would need the staff you have been using right 24885
along and more, perhaps?

A. I said many other things.

Q. Did you in a general or tentative way make any estimate before you came to a determination not to do it—of what these amounts might aggregate?

Mr. Ransom: Objected to as immaterial.

The Master: What amounts?

Mr. O'Brien: Amounts that are set up in operating expenses for individual years, which should be spread over a number of years.

By the Master:

Q. Did you make any estimate of that figure?

A. I did not.

Q. Did you have any idea of the figure?

A. I did not.

Q. Have you now?

A. No.

The Master: Next question. Does that request still stand that you want an adjournment until 2:30?

Mr. Ransom: Yes.

24887 Mr. O'Brien: Your Honor, I do not object to a little longer than 45 minutes for lunch, if you want to adjourn now.

The Master: I know you do not.

Mr. Ransom: What we can do is this—take a recess until two and then go ahead with Mr. Teele at two.

Mr. Chambers: Before we adjourn, since I cannot have Exhibit W, I ask that the witness be directed to give me the date appearing on it when it was offered in evidence.

Mr. Ransom: I have not any objection to their having Exhibit W.

24888 The Master: Then give it to them.

Mr. O'Brien: Make the record complete, Judge.

Mr. Ransom: This is Defendants' Exhibit W, September 17th, and I am entirely glad to have Mr. Chambers have it, providing he will return it. (Handing to Mr. Chambers.)

Mr. Chambers: It was my request that we wanted it to make a copy of it and you and the Court both would not allow me to take it.

Recess until 2 o'clock P. M.

Afternoon session.

CROSS-EXAMINATION CONTINUED BY MR. O'BRIEN:

Q. Mr. Teele, calling your attention to page 57 of this schedule, Distribution Expenses, and particularly to the second item therein referring to Ledger folio 927, insurance, $99,600.43 why did you put that amount in this schedule of distribution of expenses to the complainant company?

A. Because I have included it in distribution expenses in all other years.

Q. How did you know that that relates to the distribution expenses of the complainant company? 24890

A. I have previously stated that insurance and other general expenses have been merged, had been stated under the heading of "Distribution of Expense," and no subdivision of such made.

Q. Did you see any vouchers covering the items set forth in that account on page 926 of the ledger for 1917?

The Master: That I will not allow. The witness has stated repeatedly that he did not analyze the accounts prior to 1918.

Mr. O'Brien: He would have to do this as to this month and this year give us the schedules and to verify the operating expense for 1918. 24891

The Master: It is on the record.

Mr. O'Brien: He would have to go into every account in the 1917 ledger to give us the testimony that he has given us, if it be at all reliable, for 1918.

The Master: I will not allow the question.

Mr. O'Brien: Exception.

Q. So far as you know, then, these items charged up to George B. Cortelyou, *et al.*, may not be chargeable to the distribution expenses of 1917?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. And so far as you know these items that were charged up to H. E. Gawtry each month, various amounts in this account, "Insurance," on page 926 of the ledger for 1917, may not be properly chargeable to distribution expense.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you make any effort to find out whether these insurance charges here were ever actually paid?

The Master: Same ruling.

Mr. O'Brien: Exception.

24893 Q. Did you make any examination to enable you to say that these items of insurance here do not cover properties other than those of the complainant company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Are you able to say as to the operating expense for 1918 that there was ever actually any money paid by the complainant company for insurance?

The Master: I sustain the objection upon the ground that the year 1918 has been fully and exhaustively covered.

Mr. O'Brien: That question I do not think was

24894 ever asked.

The Master: I will not allow you to ask it now.

Mr. O'Brien: It comes quite cognate to the matter we have before us.

The Master: I will not permit it.

Mr. O'Brien: He may make deductions as to the other years from what he knows as to the year 1918.

The Master: I will not allow you to ask it.

Mr. O'Brien: I note an exception to your Honor's ruling.

Q. Are you able to explain from your examination of the books, or the examination made by your men, just how and why payments were made to Hamlin & Co. for insurance?

A. Same ruling.

Mr. O'Brien: Exception.

Q. Is Mr. Hamlin an employee of the company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. In making your analyses of the accounts for 1918, was it not necessary for you in asserting the reliability of the account from your examination to 24896
verify the amounts brought forward into the year 1918 from the previous year?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you for the purpose of your examination of the accounts for 1918, and in getting up your exhibits covering items of expense for 1918, make any tests as to the reliability of the figures brought forward from the previous year in each one of the accounts in the operating ledger?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. The same question as to the other general books 24897
of account of the company.

The Master: I don't know what you mean by "same questions."

Mr. O'Brien: Well, I am referring to the treasurer's book and other books that may carry over from previous years.

The Master: Into 1918?

Mr. O'Brien: Yes, into 1918, certain figures brought forward.

Q. Did you make such an examination, Mr. Teele, of these figures brought forward into any of the

24898 

other general books of account, to be able to assert that they are correct?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you make any adjustment of any of the insurance items for any of the years because of the prepayment of insurance?

The Master: I will allow that.

A. I do not now recall whether any of the adjustments made are because of insurance items. The best of my recollection is that there are no adjustments
24899 made on account of insurance. The adjustments as made in this schedule carry the information generally as to their character.

The Master: Unless it is indicated on the schedule that it was some adjustment of insurance, Mr. O'Brien is safe to assume there was none?

The Witness: Right.

The Master: Next question.

Q. Will you state why at the close of this insurance account for the year 1917 is charged up to profit and loss $99,600.43?

The Master: Not allowed. The witness is not
24900 here to make explanations as to the entries in those books. He has given you tabulations of certain items, and has told you there were adjustments.

Mr. O'Brien: Let me ask the question to bring out the purpose that I have in mind.

Q. When you spoke this morning about taking all these figures as mere tabulations from the books, and when you said that you made adjustments to the profit and loss items so that you could allocate them to the special years to which they belonged, does that mean that you took all the profit and loss accounts for all

of the years and took all of the items and spread them over different years, or allocated them to different years, or were there just certain of the items in the profit and loss account that you so made adjustments of?

Q. I took the items in profit and loss other than the items which closed the account for the year, and allocated those entries to the particular periods to which they applied. I did not undertake to investigate the accounts as closed for the year into profit and loss, and to distribute any overlapping items that might exist within those accounts. 24902

Q. Then you confined this readjusting to items in the profit and loss account other than those that closed accounts?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Will you state now if you can what those classes of items were?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Will you take the profit and loss account for each year and state to us those items that you made the basis of readjustment and those you did not?

The Master: Same ruling. 24903

Mr. O'Brien: Exception.

Q. Will you take for purposes of illustration as to what you did, the profit and loss account in the ledger for 1917, and show us how you made those adjustments, what accounts there were that you made the subject of readjustment?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Mr. Teele, will you state why in this schedule, Cost of Distribution, you did not distribute these

items in 1917 which show large amounts, into the several branch offices or stations to which they belonged?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Why did you simply give us the aggregate figures here on page 57, and not differentiate among the several stations and branch offices where such amounts have been so separated in other parts of your exhibits?

The Master: Same ruling.

24905 Mr. O'Brien: Exception.

Q. Mr. Teele, do you know why there is no reference made to the general offices in this account entitled "Vacations and Sickness," in the ledger for 1917?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Were there no allowances made for sickness in the main office?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you find in your examination of the books that that was covered in some other way?

The Master: Same ruling.

24906 Mr. O'Brien: Exception.

Q. Mr. Teele, referring particularly to this item on page 57 of this schedule of costs of distribution for the year 1917, this item, "Superannuation," page 939 of the operating ledger, you did not exclude from the total those items that are entitled "Central Union Gas Company," did you?

The Master: He may answer that.

A. I don't know which items you refer to.

Q. Well, I refer to an item that you will find in this account for pretty nearly every month.

The Master: What is the total of the superannuation account in 1917?

Mr. O'Brien: It is $56,000, your Honor. You see we have it here in various forms, this work of mercy conducted by the complainant company, we have it under "Disability"—we have it—

The Master: Well, you need not get sarcastic about it. I ruled before and I rule again that it is a proper item of expense in conducting the business. You may think it is funny, but I don't think so.

Mr. O'Brien: I don't think anything is funny, 24908
I think the views of labor at the present time are that they want a living wage, and better, and they don't want it in the shape of alms.

The Master: They want everything they can get.

Mr. O'Brien: Not in the shape of alms.

The Master: They want it both ways.

Mr. O'Brien: I don't know of any company in which the morale will be improved by handing them out anything of that kind.

The Master: You and I don't agree about that.

Mr. O'Brien: I bear in mind that you don't 24909
agree with me. I am making the record—

The Master: What did you find about the superannuation?

The Witness: That is the balance of the account.

The Master: In other words, the Central Union have been debited?

The Witness: Charges from the Central Union come into this account, and are included in the total. There is evidently some charge that comes

24910 Arthur W. Teele, Cross.

through from the Central Union, they make some payment for the Consolidated Gas Company.

Mr. O'Brien: You don't know that.

A. I said evidently.

Q. You didn't go into their accounts?

A. I did not.

Q. You did not go into the underlying data on which these accounts were made in this book?

The Master: I won't allow the question, because he has answered that fourteen times.

Mr. O'Brien: He apparently gave your Honor
24911 some information on it, that is why I asked him the question.

The Master: Go ahead.

Q. Mr. Teele, did you endeavor to make any examination of the account of 1917, and particularly the closing figures for the account covering automobile expense, $114,355.79, to enable you to eliminate from that amount the expenses of automobiles used by the officers or by employees on other than the gas business of the complainant company?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Mr. Teele, do you know whether in years prior
24912 to 1917 there was any distribution appropriation made to employees?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Will you state what employees this appropriation was made for?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Will you state on what basis that money was distributed?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you see any receipts for this money?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Why did you include it in the list of distributive expenses for the year 1917?

The Master: Same ruling.

Mr. O'Brien: Exception. Is your Honor ruling that out because of the idea that that is going to increase the morale of the company, too?

The Master: I won't get into an argument. I rule it out.

Mr. O'Brien: I call it to your Honor's attention anyway right here, so that my work will be apparent. 24914

The Master: You do not have to call it to my attention. I see it.

Mr. O'Brien: It is entered here on the virgin page, one entry appropriations for employees, and charging it to profit and loss.

The Master: What are you doing, Mr. O'Brien, comparing the items on Sheet 57 of the schedule given you with the book entries?

Mr. O'Brien: Your Honor, I am trying to give you in the questions and the lines of questions I have adopted, certain types of situations that exist all through these accounts. 24915

The Master: Yes, I notice that for the last five minutes before you asked these three questions about distribution, which I ruled out, you apparently were comparing various pages of the ledger with this Sheet 57. If that is so, I would like to know it, and if it is so, I would like to know why it was not done before, and if it were not done before, I want to know why I should have to sit here while you are doing it.

24916 Arthur W. Teele, Cross.

Mr. O'Brien: I do not understand that the Master has to do anything.

The Master: I have got to sit here for every useful purpose.

Mr. O'Brien: I have already placed on the record in more ways than one, and with some emphasis, my disagreement with your Honor as to the ruling you have made requiring us to come in here and state, before we ask any question, that there is an error we want to point out. I am trying to point out a system here particularly now with regard to these closing items of 1917, because we have reached a point that does not exist so far as the other accounts for other years are concerned in just the same way. The witness as to these closing items of 1917 has got to be able to say something more about them than that he just took the totals from the books.

24917

The Master: But I ruled—

Mr. O'Brien: Because he is here on the threshold of a year that he claims that he examined minutely.

The Master: Next question.

24818 Q. Mr. Teele, in the matter of the item on page 56, salaries general office in the year 1917, $333,948.37, did you make any—go behind the aggregate figures for the year there to determine whether or not the payments made to general officers, whether these general officers gave their time to the company, whether they were doing work for other companies and whether or not their time had been properly allocated, and details of that kind?

The Master: Question not allowed.

Mr. O'Brien: Exception.

Q. Mr. Teele, calling your attention to page 57 now, I ask you why you included in the distribution

expenses for this year the sum of $61,000.08 for duplicate gas charges?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Do you know what that means?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you make any effort to find out what it meant?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you make any examination or analysis or 24920
computation to enable you to say that it should be properly charged up in the operating expenses for the year 1917?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What was the basis of your judgment in charging it up to 1917 and not in part to other years?

The Master: Same ruling.

Mr. O'Brien: Exception. Your Honor, at this time I want to say that I had intended, and will now, with your Honor's permission, make a similar examination of the witness as to other years to bring out the points I have had in mind, to 24921
show the futility of accepting some figures that the witness has brought in here from the books without an audit being made, or without an examination being made of underlying data, and without an examination being made of the books of the affiliated companies, without an adjustment being made of all items of expense in the various accounts in the operating ledgers for the various years, which should be distributed over many years, and the inadequacy of the work

done, even so little as has been done, in getting these figures together to produce anything that might be of aid to the Court, or that might serve for any purpose in a rate case. I do not want to prolong the examination by going over that same ground. A great many of my questions on all of them, it is true that a great many of them would be along that line, and with respect to various items of the several years showing, too, the unreliability of taking a final figure, the difference in the methods used by the company, at
24922 different times, with regard to their books, the failure to carry forward—

The Master (interrupting): Do I understand you have nothing else to ask now?

Mr. O'Brien: I am giving your Honor my view of this matter now, accepting your ruling that such questions will be ruled out. I am assisting, in other words, because of the pronouncement you have made, that you will so rule on questions that may come up with regard to the other items similar to those I have asked today.

The Master: Have you anything else then?

Mr. O'Brien: I hope to have. I am going to
24924 look at these other exhibits.

The Master: What other exhibits?

Mr. O'Brien: Well, these. It is understood that your Honor has ruled out questions of the same tenor.

The Master: I will make no further statement.

Q. Mr. Teele, if I were to ask you the same questions, or questions along the same line, all of the same tenor that I have asked you today concerning all of the other items in this schedule of distribution

expenses which was furnished us on Saturday, December 6th, would your answers be the same?

Mr. Ransom: Objected to as incompetent in form.

The Master: Question not allowed.

Mr. O'Brien: Well, that is along the line of expedition, your Honor.

Mr. O'Brien: Judge Ransom, I will ask you for the original exhibits now.

Mr. Ransom: The Master has them.

The Master: What do you want, Exhibits 382 and 387? There they are (handing to Mr. 24926
O'Brien).

Q. Mr. Teele, you got an exhibit here, No. 382, in which you compiled a number of figures for the year ending October 31st, 1919. I want to ask you now where you were enabled to get the figures for the last three months?

The Master: The last two months.

Mr. O'Brien: The last two months, yes.

A. From the books.

Q. You mean the general books of account?

A. I mean the operating ledgers and the accounts and records referred to in the entries made in those ledgers. 24927

Q. Did you get into the manufacturing books, reports from stations, reports from branch offices?

A. I did refer to them, yes.

Q. How much, or how far?

A. To the extent of obtaining the quantities of materials used as set forth in Exhibit 387—that is, that part of the quantities set forth in Exhibit 387 which pertain to the months of September and October.

Q. You mean by that that the general books of account were not all set for the month of October?

A. I mean that the books of account carried the entries for September and October. Where it was necessary for me to go to the manufacturing reports to get the information to state these schedules I have so referred to them.

Q. Was this work done since the 1st of November?

A. Since the 1st of November?

Q. Yes.

A. Why, certainly.

Q. And what time was it done in November?

A. The accounts were not balanced until I think
24929 the 15th of November.

Q. Well, were they balanced on the 15th of November.

A. I think they were balanced on the 15th. It may have been the 18th.

Q. Was all of this work done since the 15th of November?

A. All of what work?

Q. What?

A. All of what work?

Q. The preparation of this exhibit, so far as it related to the last two months?

A. This schedule has been prepared since the 15th
24930 of November.

Q. How many men did you have working on it?

A. I do not know.

Q. Approximately how many?

A. I have not kept tabs of the men that were working on this schedule as separated from other work that we have been doing.

Q. What other work have you been doing during that time?

Mr. Ransom: Objected to as immaterial. A great cord and reams of it have been furnished to the defendants.

The Master: I will sustain that. Have you something in the books to attack the reliability of the schedule?

Mr. O'Brien: I am attacking it now, your Honor.

The Master: Have you anything in that book there that will attack the reliability of this record?

Mr. O'Brien: The very fact that he has done this work from the 15th of November speaks for itself, your Honor. The man has been in court during most of that time.

The Master: After Mr. Teele said that the 24932
books were balanced on the 15th of November, you proceeded to get a book.

Mr. O'Brien: I am coming to that.

The Master: Is there anything in that book that challenges that statement; if so, I would like to see it.

Mr. O'Brien: I will come to that in a minute. I would like to take up the examination in my own way.

The Master: If you do not get along with it I will have to take the witness off the stand.

Q. Mr. Teele, would you say that twenty men were working on it? 24933

The Master: Objection sustained.

Q. Has it been customary for the company during the year 1919 to have their books balanced by the 15th of every month?

The Master: The question is not allowed.

Mr. O'Brien: Exception. Your Honor, I do not need to remind you of the testimony given by this witness.

The Master: Do not remind me of it. If you have anything there to show to this witness, in-

24934 Arthur W. Teele, Cross.

dicating that he is not telling the truth, call it to his attention.

Q. I call your attention to operating ledger B for the year 1919, Mr. Teele, and ask you if every account in this operating ledger is balanced down to the 15th of November?

A. What do you mean by balanced?

Q. Well, I am asking you. You used the term. I will ask you now, what do you mean when you say it was balanced about the 15th of November?

A. I mean that the debits and credits posted in the
24935 ledger are equal at the end of October.

Q. Will you turn right here to page 846, Salaries General Office, and tell me whether that book is posted down to the 15th of November?

A. It is not supposed to be posted down to the 15th of November; it is supposed to be posted to the 31st of October.

Q. Is it your position, Mr. Teele, that the whole of this ledger is posted as of that date?

A. It is.

Q. There are no readjustments to be made?

A. What do you mean by readjustments to be made?

24936 Q. Well, you have been talking about readjustments since you went on the stand last summer.

A. Well, I know what I am talking about. I am asking you what you mean?

Q. I am using the term as you used it.

A. I do not know what you mean.

Mr. O'Brien: I press the witness for the answer.

The Master: I will not press him any further. He says he does not know what you mean; that is his answer.

Mr. O'Brien: The question goes unanswered, your Honor, unless you ask the witness to reply.

The Master: No, he says he does not know what you mean.

Mr. O'Brien: I am using a term that has been used since the beginning of this case.

The Master: He says he does not know what you mean.

Mr. O'Brien: The case is honeycombed, the books are honeycombed, with readjustments, and I have used that term. He has used it today with respect to the profit and loss accounts of every year from 1906.

Q. Is it your position, Mr. Teele, that all the bills 24938
incurred up to date had been paid before the end of October?

Mr. Ransom: I object to the question as meaningless and absurd on its face.

The Master: I will let the witness answer.

A. It is not my position, because whether the bills are paid or not has nothing whatever to do with the statement of the accounts.

Q. Well, we are not on that stuff where you merely dealt with tables, you know. I am talking about the present now.

A. So am I.

Q. Where you were standing for the figures. 24939

A. So am I.

Q. I call your attention to the pay roll general office salaries, page 846, and ask you if you examined the underlying data for all of the details in this account for those two months?

A. I have not.

Q. Did your men?

A. They did not.

Q. Did your men for the purposes of this Exhibit 382 assume that the figures set forth in the ledger were correct as to those two months?

24940 Arthur W. Teele, Cross.

A. As to those two months, yes.

Q. Was there any effort made in the work that they did to determine whether or not the bills that were loaded into these two months should not be put into the accounts for November and December?

The Master: The question is not allowed.

Mr. O'Brien: What is the answer?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Did your men have the manufacturing report of the 99th Street Station for the months of September
24941 and October when they made up this schedule?

The Master: Not allowed.

Mr. O'Brien: Exception.

Q. Did they go into the underlying data to determine the correctness of a report?

The Master: Not allowed.

Mr. O'Brien: Exception.

Q. Did your men examine the vouchers for coal and oil used—coal and oil delivered during the months of September and October?

The Master: It is not allowed.

Mr. O'Brien: Exception.

Q. Was there an inventory made at the end of Au-
24942 gust in the several stations of the complainant company to determine what quantities were on hand at that time and what were delivered during the months of September and October?

The Master: Not allowed.

Mr. O'Brien: Exception.

Q. What underlying data, if any, did you use with respect to page 4 of this schedule, Exhibit 382 for identification?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What investigation, Mr. Teele, did you make of bills outstanding for the month of October that meant assets of the company, to determine the amounts of receipts chargeable to the month of October?

The Master: Same ruling.

Mr. O'Brien: Is your Honor ruling that out on the assumption it has been covered already?

The Master: I am not going to explain my ruling any further.

Mr. O'Brien: Your Honor sees the point I am trying to get at here, and that is—

The Master: The witness has stated to you 24944
that neither he nor his men analyzed these accounts for September and October, but took the figures as they appeared in the books and carried the figures down for each year. What is the use of wasting time?

Mr. O'Brien: If I get the definite statement, your Honor—

The Master: You cannot get it any more definite and I am not going to let you. Now, go ahead.

Mr. O'Brien: If the witness can state whether, with the exceptions which he makes, he simply took the figures as shown in these accounts at the 24945
close of the month, without going into the underlying data as to those two months in the shape of branch office reports, vouchers, pay rolls, manufacturing reports, invoices, etc., why then, of course, I will not have to go over those things.

The Master: The record so shows it, and I will not let you ask any more questions about it. You get so absorbed with your subject that you overlook the fact that you have already covered it. That is my trouble with you.

Mr. O'Brien: If your Honor please, that has not been covered. For instance, I owe the company a lot of money. I owe the gas company some money—

The Master: This case is not going to turn on this exhibit. Now do not waste so much time on it. I do not know why it was put in. I will never take a paper if it takes a nominal year, so-called, and be guided by it. All that was said, Mr. O'Brien, about Exhibit 382 applies to Exhibit 387. It is only a different form of Exhibit
24947 382.

Mr. O'Brien: Yes. There were a few matters; the question of the transfer of gas—

The Master: I will not let you go into it.

Mr. O'Brien: I want to cover that, your Honor.

The Master: I will not let you go into it. I ruled it out when Mr. Chambers asked it and I will not let you ask it. We know all about transferred gas. We know what the situation is about transferred gas; and I am not going to decide this case on what they pay for transferred gas. This case has got to be decided on the amount of
24948 gas they sell and what it costs to make and distribute that amount of gas, whether they make it or somebody else makes it. Isn't that so, Mr. Vilas?

Mr. Vilas: It is.

Mr. O'Brien: Well, there are many theories that may be involved in that proposition.

The Master: Ask your questions. I am trying to save you time and energy. You work harder than anybody in this case because you will not submit to a ruling that is made, and you work so hard for fear that you are not covering your-

self, and I am trying to save you energy. Really I mean that.

Mr. O'Brien: That is not for the record? That is *sotto voce*, is it not?

The Master: Anything I say goes on the record. There is not anything I say in court here does not go on the record.

Mr. O'Brien: I would like to ask the witness, for the months of September and October, whether there was any special verification of the gas transferred item.

The Master: I will let him answer that. 24950

Mr. O'Brien: To the extent of going into the method by which the debits and credits of transferred gas were computed.

The Master: Or, putting it in another way, did you rely on the bills which you found there for gas transferred?

The Witness: I relied on the bills rendered for the amount of gas transferred for September and October.

Q. And also for the amount of gas sold by the Astoria Company to the complainant company?

A. Yes.

Q. You did not go behind those bills in that case? 24951

A. I did not go behind the bills for September and October.

The Master: There is nothing else, is there?

Mr. O'Brien: I do not know why everybody gets uneasy when I take the floor, your Honor.

The Master: They do not get uneasy. I have tried to explain to you why I get impatient. I let you go to the point of asking questions that show clearly on the record my attitude with regard to your line of examination, and there is not any sense of repeating them over and over again

when I have indicated my attitude and you have your ruling. But you are always afraid you are not protected and you persist in asking questions.

Q. Mr. Teele, in this Exhibit 389 entitled, "Real Estate Improvements Other Than Plant Owned and Used in the Gas Business, 1906 to 1918, Inclusive," generally speaking are these figures found as such in the books of account, or are some of them figures resulting from computations you have made from the figures in the books?

24953 The Master: I think Mr. Chambers has covered that.

A. You mean are they merged in other figures? There are no computations so far as—

Q. (Interposing.) Can we by going to the ledger for the year named in each one of those pages, and to the page mentioned, find the figure just as you have got it in this exhibit?

A. So far as I now recall you can. There may be some exceptions.

The Master: Mr. Chambers has been all over that. Mr. Chambers went through each page in detail and pointed out certain items that he could
24954 not check, and he apparently had compared it with the books. I will not allow any more questions on that.

Q. On page 9 you have various items for grading of the Kingsbridge station?

A. Yes.

Q. Are each of those figures found in the books in the exact number that you have here in this exhibit?

The Master: What books are those that are referred to? What year?

The Witness: The operating ledger.

The Master: For what year?

The Witness: There is a separate ledger for each year. The year is indicated.

The Master: Question not allowed. If you want to test it get one of the books.

Mr. O'Brien: Exception. They have a lot of items here, planting trees, and grading, and a lot of work that—

The Master: Next question. I rule the question out. The book is in court. If counsel has not looked at it before I will give him an opportunity to look at it now. I won't allow this question. 24956

Mr. O'Brien: Exception.

Q. Does this schedule, Mr. Teele, purport to set up of all of the withdrawal of expenditures made from January 1, 1906, to 1918, inclusive?

A. I answered that question this morning, but I will say again that so far as I now recall it does include all of the withdrawals from 1906 to 1918 inclusive.

The Master: Of what character?

The Witness: Of this character.

Mr. O'Brien: In view of the ruling that the Court has made during the course of this and my other cross-examinations, particularly since November 20th— 24957

The Master: Is that the date?

Mr. O'Brien: That is the day when the red flag went up, when your Honor fell into grave error. I desist at this time from further cross-examination because I realize that the questions I would ask would be ruled out by your Honor, and I do not care to take up the Court's time and the witness's time.

The Court: All right, Major Clark?

CROSS-EXAMINATION BY MR. CLARK:

Q. Mr. Teele, you did not include in the residual credits the profits of the National Coke & Coal Company, did you, on the sale of coke?

A. I certainly did not.

Q. You did not include or credit against repairs of meters, any profits that the Standard Gas Light Company may have made by reason of the repairing of meters for the Consolidated Gas Company, did you?

A. I do not know of any such profits.

24959 The Master: You did not include any?

The Witness: I did not include any.

Q. You don't know whether they made a profit or not?

A. They are not supposed to make any profit.

Q. You don't know whether they did make a profit?

A. My recollection is that they did not.

Q. Do you know?

Mr. Ransom: That was covered when the witness was on the stand before.

A. The cost of repairs made by the Standard Gas Light Company are supposed to be at cost. The expenditure made by them in making repairs—

24960 Q. Do you know anything about it yourself? Have you examined their books, to know?

A. I and my staff have examined the books of the Standard Company, so I am familiar with it at the present time.

Q. Are you familiar enough to state whether they have made a profit or not?

A. My recollection is that there is no profit made on the repair work, that it is done at cost.

The Master: At any rate, you have not included that profit in your figures?

The Witness: If there is any I have not included any such profit.

Q. The insurance that is maintained by the system has accumulated a fund out of which fund, as I understand it, interest is paid each year to the holders of certificates. Is that correct?

A. What do you mean by the insurance maintained by the system?

Q. This insurance fund is maintained by the Consolidated Gas system, is it not?

A. Yes, that is, there is an insurance trust, an association formed for the purpose of insuring the properties of the Consolidated and other companies. 24962

Q. And those trustees have a fund that they have accumulated, have they not?

A. Yes, I believe they have. I have not examined their accounts.

The Master: They have a fund accumulated by way of profits?

The Witness: And risks unsettled.

Q. And the different companies that contribute to that fund hold certificates for their share in the fund, do they not?

A. They hold certificates, yes, upon which interest is paid. 24963

Q. Did you credit the interest which they received on these certificates against the insurance which they paid?

A. I did not.

Q. Where is that taken in?

A. I have not included it as part of the insurance revenues.

Q. Is it included in any of the distribution revenues, or any of the operating revenues?

A. It is not.

Q. The entire insurance is taken out as a distribution expense?

A. Yes.

Q. The interest is not credited either to operation or distribution?

A. It is not.

Q. Mr. Teele, you have not included all of the profits and loss adjustments in these schedules that you have presented here, have you?

A. No, there are some adjustments made to profit and loss accounts which affect accounts other than
24965 gas items, which of course are not included.

Q. I call attention to an item on page 429 of the operating journal for 1918, Item No. 1203, which reads: "General Suspense—Sale of Coal to New York Edison Company—to General Profit and Loss for the excess of current market price over the actual cost of 21,009.98 tons of bituminous coal sold by this company from its stock at the 14th Street and 42nd Street stations to the New York Edison Company, such excess having accrued over a period of years during which this company purchased coal at prices considerably lower than those prevailing at the time of the sale." The amount is $71,871.78. Did you in-
24966 clude that amount, credit that amount to operating expense for this year?

A. I think not; I see no reason why it should be.

Q. If the Consolidated Gas Company has used this cheap coal instead of buying expensive coal in 1918, they would have saved that money?

A. If they had used something else, but they sold property that they had on hand.

Q. If they had not sold it they could have used it and saved that money in the cost of operation, could they not?

A. Why, they would have had to replace it immediately by higher priced coal.

Q. They had to replace it anyway, didn't they? You know that they bought coal in 1918 at the same price at which they sold to the New York Edison Company?

A. I think this was coal that was located at a station that was not at that time operating. I am not quite clear in regard to it. (Witness consults book.) It is coal that was on hand at the end of 1918. Of course it would not affect the operations of 1918.

Q. On hand at the end of that time?

A. At the end of that time, unless it was used in operations at that particular point, or transferred to 24868
some other point.

Q. What makes you think it was sold at the end of December, 1918?

A. It was not sold at the end of 1918, as I recall. The entry was made in December. Major Clark, I cannot answer offhand without looking the item up. I know I have somewhere in my papers the manner in which I have dealt with it, but I cannot at this minute recall clearly, and I haven't any information here to aid me. I will be glad to look it up and advise you in regard to it.

Q. Mr. Teele, will you turn to page 5 of this schedule of the cost of distribution? 24969

A. Yes.

Q. The item, "Refund of Paving Charges to the City of New York," total $51,480.58?

A. Yes.

Q. Referring to the journal, folio 141 Item 344, we find the following: "General Suspense—To General Profit and Loss—To Transfer from the former to the latter account of net amount received in settlement of certain claims for excess charges made by the City for the repavement of street openings; amount received from the City, $103,540.93; contin-

gent fee for services rendered in connection with settlement, $51,770.47; other expenses $289.88; total expense $52,060.35; net amount as above $51,480.58." That is the amount which I just spoke about. Did you make any examination of that item to ascertain the reason for the large amount of legal expenses involved there?

A. No, I made no examination of the entries used here allocated to other years adjusting the book accounts other than that necessary to determine to what periods they were to be applied.

24971 Q. Why were not the legal expenses involved here applied under legal expenses in these accounts?

A. Because in the tabulation of this statement we dealt with the accounts as they appeared on the ledger, and were closed into the profit and loss account at the end of the year, and then added at the end of that tabulation the adjustments which we made of entries appearing in the profit and loss account, that being the way in which we worked up the statement, and we consequently made this tabulation on the same lines.

Q. You have allocated the different profit and loss items to the various years, and in the various accounts to which you think they belonged, haven't you?

24972 A. Yes, sir.

Q. Why didn't you put this legal expense in the legal expense account in the various years, that $51,770.47?

A. Why, we have dealt with $51,480.58 here.

Q. That is the balance, isn't it? I am speaking of the $51,770.44, legal expense. I have not dealt with anything beyond what the entry itself deals with. The entry deals with $51,480.58, and I have dealt with the same amount.

Q. Which the books show was made up by reduc-

ing the amount received of $103,540.93 by legal expenses of about $52,000?

A. The entry speaks for itself. It deals however with only $51,480.58, the net balance between the transactions described.

Q. Didn't you go back to this journal entry when you made your allocation to prior years?

A. Did we go back to that journal entry?

Q. Yes.

A. That is what we did go back to, we went back from the Profit and Loss Account to that entry, and that entry deals with $51,480.58. That is what is 24974
charged in the Profit and Loss Account of 1918.

Q. That entry did not indicate to you that any amount should be charged to legal expense for that item?

A. No, it did not. It indicates that the amount that should be dealt with is the refund of paving charges from the City of New York amounting to $51,480.58.

The Master: It is perfectly apparent the Company did—not want to set up a receipt of $100,000 and the cross item of $50,000, they took the net amount received credits, and it apparently was something that somebody dug up 24975
and brought in to them, and they were willing to split it with them.

Q. Mr. Teele, will you turn to page 42 in the cost of production schedule, you have an item there of Gas Transferred $19,000. That appears to be an adjustment for the years 1916 and 1917. That w to the New Amsterdam Gas Company, wasn't it?

A. Whatever the entry says. I do not recall without looking back to it.

Q. Have you anything in your working papers to indicate that?

A. I think so, yes.

Q. Would you look that up for me?

The Master: What is the point you want to bring out, Major?

Mr. Clark: Just the point that the Transferred Gas is not only readjusted at the end of one year, but it is frequently readjusted after the year is closed for years back.

The Master: Won't that show from this, without getting at his working papers? That seems to show on its face.

Mr. Clark: Yes, but I wanted to find out the
24977 basis of it.

The Master: He has got it.

The Witness: The total bills as originally rendered for 1916 and 1917 were $239,698.27 the bills as revised for 1916 and 1917 were $258,740.34 and instead of being an increase of $19,042.07 in one year, it was an increase of $22,165.42 in 1917 and a decrease of $3,123.35 in 1916.

The Master: How did it come about that the adjustments were made two years after the event? That is what Major Clark wants to know.

Mr. Clark: Yes, that is what I want to drive
24978 at.

The Master: What brought that about? I imagine you will get that better from Mr. Carter, when he gets on the stand.

Mr. Clark: I do not know what he is going to testify to.

The Witness: The original entry is not here, so that—

The Master: When was the adjustment made? What is date of the journal entry showing the adjustment?

The Witness: It is made in the 1918 Ledger, folio 1172.

The Master: In other words, in 1918 there was a readjustment of the 1916 and 1917 Gas Transferred figures to the New Amsterdam Gas Company.

Mr. Clark: Yes.

The Witness: The working paper to which my attention has been directed contains no more information than the item itself on the schedule, which simply says Adjustment of charges for Gas Transferred during the years 1916 and '17 from 24980
the New Amsterdam Gas Company, and without referring to the original entries I cannot state anything beyond that.

Mr. O'Brien: Your Honor, I move to strike that from the record, this being made in answer to no question.

The Master: Motion denied.

Mr. O'Brien: Counsel who is examining him is busy getting ready to ask him the next question, and I think the witness ought to be told not to talk into this record.

The Master: What did he say?

Mr. O'Brien: I do not know what he said, 24981
mumbling over there; the stenographer is getting it down, and he is the only one that hears it.

The Master: He says, "I have just looked at my working papers and I do not know anything more about it than I did before."

Q. The entry on the ledger shows that it was made on June 14, 1918?

A. Yes.

The Master: Is there any way that you can tell us what caused that adjustment to be made at that time?

The Witness: Is the journal for 1918 here?

Mr. Clark: Yes.

The Master: The journal would not show you what occasioned the adjustment at that time, it would simply show that there was an adjustment, wouldn't it?

The Witness: It might give the reason for the revision of charges.

The Master: All right, look it up.

The Witness: And Mr. Frank informs me that it is not in the journal, it comes through on
24983 a voucher and the vouchers are not there.

The Master: Well, there is no use looking it up, if Mr. Frank says it is not there.

Mr. Ransom: Why doesn't the Public Service Commission say what it was for? They brought it about.

The Witness: They have had the opportunity of taking these items up with me, and I do not see why they have not done it.

Mr. O'Brien: I move that that be stricken from the record.

The Master: No. If I strike it from the record as the witness's statement, I may make it
24984 myself. Next question.

Mr. O'Brien: That star chamber examination of Mr. Teele I never assented to, your Honor.

The Master: I know you did not. I have yet to get you to agree with me on anything.

Mr. Clark: I have no further examination, but I have a request that Dr. Webber has asked me to make for further information. The plaintiff was requested to furnish the defendants the following information as to items of residuals produced appearing in the tabulation presented in regard to cost of production: First, for each

year the amount of each kind of residual produced at each station; second, the amount of expense for each kind of residual produced at each station in each year; third, the amounts received for each kind of residual sold in each year at each station.

The Master: Hand it to the other side. Now call your next witness.

Mr. Chambers: I would like to state that Exhibit W, I have the original record here, was not offered in evidence by the defendants, was not received as an exhibit in the case, and was offered by me only for identification, it was never 24986
examined by me, as the record shows nor by any of the defendants, and is not an exhibit in the case, and I further make the statement that Judge Ransom was in error when he stated that the defendants had it, had had a copy of it and that it was an exhibit in the case, referring now to the original stenographic minutes.

The Master: The exhibit should be marked Exhibit W for identification.

Mr. Chambers: Now I ask that the defendants be allowed to make a copy of it.

Mr. Ransom: A substantial part of this Exhibit W for identification, not all, was fur- 24987
nished to the defendants who were at that time in the case, early last spring; subsequently Mr. Maltbie asked for an itemization of a certain part of it, a further itemization, and that was furnished about the time this case was started. I think there may be some schedule in this that they did not ask for, but there is no objection to them having copies of this, they can either make them, or we will make them.

The Master: Then what is the use making a speech about it?

Mr. Chambers: I will let the speech of Judge Ransom stand as—

The Master: That will do. Give them to Mr. Chambers and let him copy it and return it to you.

Mr. O'Brien: Well, is he going to furnish the defendants with a copy of it, your Honor?

The Master: No. You can have a copy of it, if you want.

Mr. Ransom: I will copy it, or let Mr. Chambers do it.

24989 Mr. Chambers: Well, suppose you do it. There is no objection to that. All we want is a copy of it.

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ROBERT A. CARTER, recalled.

DIRECT-EXAMINATION BY MR. RANSOM:

Q. What is your connection with the Consolidated Gas Company?

A. Vice president and secretary.

Q. How long have you been connected with the

24990 company?

A. Since it was organized in 1884.

Q. Prior to that, with what were you connected?

A. With the New York Gas Light Company.

Q. What are your duties at the present time as vice president and secretary of the complainant?

A. I have charge of the company's general books, all of the books of account, of the stock transfer department, of the various minutes of the company, and I have in my jurisdiction more particularly under my supervision the commercial department, the appliance department and the utilization department.

Q. For how long have you given special attention to matters pertaining to the accounting and commercial departments and the financial affairs of the company?

A. I have been connected with the accounting branch of the business since I entered it in 1877.

Q. That is, with the New York Gas Light?

A. That was with the New York Gas Light.

Q. Well, what were your various positions with the New York Gas Light Company and the Consolidated Gas Company?

A. I was a clerk in the accounting department and 24992
commercial department of the old New York Gas Company. In 1884 I went to the general office of the Consolidated Gas Company in a clerical capacity. My duties were connected more or less with the general accounts of the company and the statistics of the company and of its operations. I worked on the general books and finally became chief clerk of the accounting department and comptroller, and secretary. During all of that time my contract with the company's account and statistics has been very close.

Q. As secretary of the complainant company have you charge of the stock books, stock ledgers and other records pertaining to the stockholders and the owner- 24993
ship of the stock of the complainant company?

A. I have charge of those matters.

Q. Please state the total number of stockholders of the Consolidated Gas Company as of the most recent date concerning which you have information?

Mr. Ransom: The witness is referring to a paper now, is he?

The Witness: I am.

Mr. O'Brien: You don't carry that in your head?

The Master: You need not answer that, Mr. Carter.

A. The company has over 8,000 stockholders.

The Master: You are stating that without reference to a memorandum?

The Witness: Yes.

Q. Is the number 8,275?

A. Yes, I should say it was exactly that, to the best of my recollection. I thought I had a memorandum of the stockholders.

The Master: That is near enough.

24995 Q. That is of November 12, 1919?

A. As of November 12, 1919, when the books were closed for the November dividends.

Q. Are you able to state how many of them are residents of New York State and how many of other states?

A. I do not think I have any memorandum of that at the moment.

Q. Does this memorandum prepared by you refresh your recollection (handing to witness)?

A. Yes.

Mr. O'Brien: Just mark that for identification, your Honor.

24996 The Master: Yes.

Mr. Ransom: He has it.

Mr. O'Brien: It has been shown to the witness and I want to have it marked for identification.

The Master: Mark it for identification.

Marked Defendants' Exhibit AA34 for identification.

Q. How many were residents of New York?

A. 6,014 were residents of New York.

The Master: Of New York State?

The Witness: Yes, of New York State, and 2,261 were non-residents of the State.

Mr. O'Brien: Judge Ransom, what is the purpose of this division in New Yorkers and non-New Yorkers?

Q. Can you classify these with respect to—

Mr. O'Brien: We might ask the counsel to tell us some of these things, your Honor. The rule has been made as to my cross-examination, coming in with a pronouncement of the purpose of the questions.

The Master: I will see.

Q. Can you classify the company's stockholders with respect to the numbers of shares held by them? 24998

The Master: What is the purpose of this, Judge Ransom?

Mr. Ransom: I desire to show how widely this stock is held.

The Master: What difference does that make?

Mr. Ransom: It has a bearing, I think, under the authorities.

The Master: In what respect?

Mr. Ransom: It has a bearing upon its status in a court of equity, and has a bearing upon the situation with respect to this franchise value found by the Supreme Court.

A. 1,335 of the stockholders hold from one to nine shares; 2,704 hold from ten to twenty-five shares; 1,371 hold from twenty-six to fifty shares; 1,305 hold from fifty-one to one hundred shares; 1,560 or 19 per cent of the entire number hold one hundred and one shares or over. 24999

Q. How many shareholders hold less than one hundred shares of stock?

The Master: That has been answered.

Q. Eighty-one per cent?

The Master: Next question.

Q. Eighty-one per cent?

The Master: I am not inclined to take this. I do not see much use of it. Cut it short, otherwise I will cut it out altogether.

Q. What is the average number of shares so held per shareholder?

The Master: That is not allowed.

Mr. Ransom: I submit, your Honor, under the authorities—

The Master: I can do it myself now easily. Mr. Carter has given me the figures; I can figure out what the percentage is without Mr. Carter

25001 giving it to me.

Mr. Ransom: Exception.

Q. At the time of the consolidation were you familiar with the terms of the consolidation, the amount of capital stock issued, and the general nature of the property for which it was issued?

A. I was.

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Master: Overruled.

Mr. O'Brien: Exception.

Q. What was the original amount of the capital stock of the Consolidated Gas Company in 1884?

24002 The Master: By that you mean what was issued or authorized?

Mr. Ransom: Well, first authorized, and issued.

The Master: The authorized capital appears from charter, does it not?

Mr. Ransom: Yes.

The Master: Then I will not take that.

Q. What amount of stock was actually issued at that time?

The Master: At what time?

Mr. Ransom: 1884.

The Master: Do you mean the original issue of stock?

Mr. Ransom: Yes.

The Master: First issue of stock to anybody?

Mr. Ransom: Yes, at the time of the consolidation.

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial.

The Master: I will take that.

Mr. O'Brien: Exception.

A. $35,430,060 par value of capital stock.

Q. Can you state how much of that was issued as 25004
for tangible property?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial, and as calling for a conclusion.

The Master: Objection overruled.

Mr. O'Brien: Do you mean in return for or as compensation to somebody for tangible property received? I think we ought to have a definite question, your Honor.

The Master: The question is definite enough for me, I understand it.

Mr. Chambers: Same objection and exception. 25005

Mr. O'Brien: Exception.

A. Total amount issued for tangible property, namely, $27,649,060, was $2,344,940 less than the amount at which the tangible property was appraised, namely, $29,994,000.

Mr. O'Brien: I move to strike it out as not responsive, your Honor.

The Master: Strike out everything but the statement that the original amount of stock issued for tangible property was twenty-seven odd million.

25006 Robert A. Carter, Direct.

The Witness: $27,649,060.

The Master: Otherwise the answer is stricken out.

Mr. Ransom: Exception.

Q. For what purpose was the balance of the stock issued?

Mr. O'Brien: The same objection, your Honor.

The Master: You mean for what purpose, or for what cash, or for what property, or what?

Mr. O'Brien: Your Honor, they may have
25007 handed a bunch of it to somebody for lobbying, but it does not cut any figure in this case.

The Master: I am going to find out what it was for. If that was so it would cut some figure.

Mr. O'Brien: It is not a measure of value in the case today.

A. It was issued for property.

By the Master:

Q. All of the balance?

A. Not tangible property, your Honor.

Mr. O'Brien: I object to that.

Q. What did the intangible property consist of?

25008 A. Franchises and rights, as they were so termed at the time.

Q. In other words, the buildings, the plants, machinery, real estate, land and the rest of it cost you twenty-seven million in par value of stock?

A. But we assumed the obligations that were then outstanding on the property.

Mr. O'Brien: Just a minute, Mr. Carter. You know the Court too well to come back and insert some answer into this record.

The Master: Who gave you permission to lecture Mr. Carter?

Mr. O'Brien: I am just interpolating his name there, but I am objecting to the Court.

The Master: Do not do it again.

Mr. O'Brien: I do not want anybody to pad this record without my objection to it.

The Master: Do not do it again. If anybody is going to lecture Mr. Carter I will do it.

Mr. O'Brien: I would like your Honor to repeat, then, what I said to him.

Mr. Chambers: I object to the question as to how much it cost the company, as incompetent, irrelevant and immaterial. 25010

Mr. O'Brien: Same objection.

Q. Your company issued $35,000,000 of stock on organization?

A. Yes, sir.

Q. For tangible and intangible property?

A. Yes, sir.

Mr. O'Brien: I make the same objection for the reason that that all involves a legal conclusion. The witness is not qualified to state it, your Honor. Exception.

Q. For that, as I understand it, you issued $27,000,000, for tangible property which you purchased subject to incumbrances? 25011

A. Subject to incumbrances.

Q. The incumbrances being what?

A. $2,329,000.

By Mr. Ransom:

Q. Making the total?

The Master: I can total these things myself.

Mr. Ransom: Your Honor has slightly misapprehended the situation.

The Master: Never mind about the totals.

Mr. Ransom: Your Honor has slightly misapprehended the situation.

The Master: I do not misapprehend it at all.

Mr. Ransom: I think you do.

The Master: They paid thirty million dollars approximately for the plant, real estate, equipment and the like, taken subject to a mortgage of two million dollars, and the balance they paid, instead of in cash, in par value of stock; in addition to which, as I understand it, Mr. Carter, you paid for intangible rights, as well as franchises and the like, seven million dollars par value of stock; is that right?

25012 The Witness: Yes.

Mr. O'Brien: I move to strike out the questions and answers of the Referee and the witness, in that they involve legal conclusions and they are legal terms that the witness is not qualified to answer about, and the terms used are contrary to the rulings of the Court.

The Master: Motion denied. Next question.

Mr. O'Brien: Exception.

Q. How much if any for working capital?

The Master: What do you mean by working capital? For money?

Mr. Ransom: Yes.

25014 Mr. O'Brien: Same objection, your Honor.

The Master: Why don't you say so. How much was issued for cash? I do not care whether it was about working capital or no working capital or labor capital—was it for cash or was it for property?

Mr. O'Brien: This is the first mention made of money, your Honor, and one of the reasons I object to your Honor's questions is that you

embodied there some thirty million dollars of money. There is nothing in this case to indicate that money passed to the extent of thirty millions.

Mr. Chambers: To that question I object as incompetent, irrelevant and immaterial.

Mr. O'Brien: Same objection, your Honor.

The Master: Was any stock issued for money at the time of organization, Mr. Carter?

The Witness: No, it was authorized but not issued.

Mr. Chambers: To that question I place the same objection. 25016

The Master: Next question.

Mr. Chambers: Exception.

Q. What was in precise figures the total amount reserved to retire the obligations of the constituent companies?

Mr. O'Brien: Objection.

Mr. Chambers: I object. I make the objection to that as incompetent, irrelevant and immaterial.

The Master: Objection sustained. What was the authorized capital of the company, Mr. Carter? 25017

The Witness: $39,000,000.

The Master: Total authorized capital?

The Witness: Yes, sir, $39,029,000.

Q. $39,078,000, was it not?

A. $39,078,000, right

The Master: Next question.

Mr. Ransom: I would like to have upon the record the precise figure of the total tangible property.

The Master: It is on the record.

Mr. Ransom: Which was reserved to retire these obligations of the constituent companies.

The Master: I am not married to your questions as they are printed in that paper there; neither are you, Judge Ransom.

Mr. Ransom: That is not my printed paper; it is an exhibit for identification.

Mr. O'Brien: What is that, Defendants' Exhibit A, Y, or Z?

Mr. Ransom: It is Exhibit AA34 for identification.

25019 Q. Has this amount $7,781,000 of franchise value been since continuously carried upon the books of the complainant company as part of its fixed capital?

Mr. O'Brien: I object to that first on the ground that he has incorporated into it the words "franchise value," which have no place in the question.

The Master: Yes, the objection is sustained on that ground. I do not need any more; it is sustained on that ground. I will permit Judge Ransom to ask whether the item of seven million and odd dollars has appeared as a fixed asset representing franchises?

25020 Mr. O'Brien: I object to that on the ground that it does not make any difference in this case what may have appeared in those books. A great many strange things have appeared continuously in those books, your Honor. The fact that it is carried in the books does not mean anything.

The Master: But I am going to get it anyhow.

Mr. O'Brien: I object to it.

By the Master:

Q. Have you carried it as an asset?

A. Yes, sir.

Mr. O'Brien: I object.

Q. At what value?

A. At $7,781,000

Q. Mr. Carter, you said that you issued seven million and odd dollars par value capital stock for franchises?

A. Yes, sir.

Mr. Chambers: To that I object as incompetent, irrelevant and immaterial

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. O'Brien: I object to it on the further 25022
ground, your Honor, that what they may have issued that for does not have any bearing upon the present case.

The Master: But they paid $7,000,000 for some franchises?

Mr. O'Brien: That does not make any difference in this case. It is going to be excluded from this base, your Honor.

The Master: I will find out about it.

Mr. Chambers: I will ask the Master to have the witness wait a minute, because I am not going to run a foot race with him to see if I can beat him to his answer. 25023

The Master: My next question is whether upon opening the books of account of the Consolidated Gas Company in 1884, you set up those franchises as an asset.

Mr. Chambers: To that I object as incompetent, irrelevant and immaterial, having no bearing on the issues in the case.

Mr. O'Brien: I join in the objection, particularly on the ground that whether they set up this or that as an asset does not make it part of the

base upon which a return is to be computed in this case.

The Master: Overruled. Answer the question.

A. Yes, sir.

Q. At what figure?

A. $7,781,000.

Q. Has that been continued on the books of the company as an asset from that time to this?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

Mr. O'Brien: Same objection.

25025 Mr. Chambers: Having no bearing on the issues in this case.

The Master: Mr. O'Brien joins in that objection, and the objection is overruled.

Mr. Chambers: Exception. I will add to my objection that that franchise amount that he gave is not a property, or not an element to be considered in a confiscatory case.

The Master: I will take that up afterwards.

Mr. Chambers: Exception.

The Master: I am going to get the facts now. Answer the question.

A. Yes, sir.

25026 Q. At what value?

A. $7,781,000.

Adjourned to Wednesday, December 10, 1919, at 9:30 A. M.

Last Complainant's Exhibit No. 397.

Last Defendants' Exhibit AA-34.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 25027

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 10, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for Defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 25028
MR. O'BRIEN, Counsel for Defendant Swann.

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ROBERT A. CARTER resumed:

DIRECT-EXAMINATION CONTINUED BY MR. RANSOM:

Q. Mr. Carter, is the capital stock of the Consolidated Gas Company listed on the New York Stock Exchange? 25029

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. I cannot see what place that has here, your Honor.

The Master: I do not, either.

Mr. O'Brien: It does not give the value of this plant at the present time.

The Master: I didn't ask you to say any more, did I?

Mr. Ransom: I may say that the questions which I have asked in this respect, as in a number of other respects which came up yesterday, are

the matters which the Supreme Court of the United States adverted to in its ruling on this question of the sum for franchises and rights in the prior case; and the desire of the complainant, and the very proper purpose of the complainant is that there shall appear in this record facts which are adverted to by the Supreme Court as the basis for its ruling in the prior case.

The Master: What does it say about the stock being listed on the Stock Exchange?

Mr. O'Brien: I submit that the Supreme Court
25031 has grown since that time.

Mr. Ransom: Well, you have not.

Mr. O'Brien: He simply wants to produce a silhouette of the old case here.

The Master: I let you put in your proof as to the issue of the stock—

Mr. Ransom: You didn't let me put it all in.

The Master: What didn't I let you put in, the total of two figures that I could add myself?

Mr. Ransom: You didn't let me put in the proof as to the part which was authorized for working capital. I want to show the extent to which the stock is dealt in by the public. I think
25032 the prior ruling of the Court is *res adjudicata* at least as to $7,781,000. The company believes that the value of its franchise is greater certainly as to that amount.

The Master: Didn't I let you prove that?

Mr. Ransom: I don't believe that you have without these other elements.

The Master: I am not going to let you ask the questions in the form in which you have put them, and you might as well make up your mind to that.

Mr. Ransom: If my form is objectionable, that is another thing.

The Master: You have written out a lot of questions which assume a lot of facts and take for granted a lot of conditions. It is perfectly easy to ask what is the authorized capitalization, what so much was issued for, and to whom it went.

Mr. Ransom: I have asked whether the stock is listed on the Stock Exchange.

Mr. O'Brien: That is as far away from this case as Mars from the earth, even with this fourth 25034
dimension that they are talking about. What boots it whether it is on the Curb or on the Exchange? If I come in here and give you the market price on the Exchange of Standard Oil stocks and bring in some of this extraneous testimony, are you going to concede it or object to it?

The Master: I will let him answer.

A. It is.

The Master: And has been since 1884?

A. Has been since 1884.

Mr. O'Brien: I note an exception to your Honor's ruling. 25035

Q. And since that time has this stock been dealt in upon the New York Stock Exchange, to your knowledge?

Mr. O'Brien: Same objection.

The Master: Same ruling.

Mr. O'Brien: Exception.

A. It has.

Q. And at times extensively dealt in?

Mr. O'Brien: I object to that, your Honor.

The Master: I will allow it.

Mr. O'Brien: Exception.

A. At times extensively dealt in.

Q. Mr. Carter, were you familiar with the report made by a Committee of the Senate of the State of New York with reference to the capitalization and properties of this company, a report under date of March 1, 1886, a Special Committee of the Senate to investigate lighting companies?

A. Yes, sir, I am familiar with it.

Q. And have you produced here one of the official copies of this report as at the time published?

A. Yes, sir.

25037 Q. A report signed under date of February 26, 1886?

A. Yes, sir.

Q. And is this such copy?

A. It is.

Mr. Ransom: I offer in evidence a report signed by T. Robinson and M. C. Murphy, to the Senate of the State of New York, the same being Senate Document No. 47, in the Senate, March 1, 1886, this being the official publication of the documents of the Senate of the State of New York, 109th Session, as published by Weed, Parsons & Co., the legislative printers.

25038 Mr. O'Brien: I ask the purpose of the offer of the proof.

Mr. Ransom: I am offering the report of the majority of the Committee.

The Master: State your objections: I am going to receive it because it is referred to in the decision of the Supreme Court of the United States. I do not see how it is important myself.

Mr. Ransom: I offer pages I to LXXXI inclusive. I am not offering the testimony.

Mr. Chambers: As I understand it, it takes in Appendix D, does it?

25039

Mr. Ransom: I am offering the portion which I have indicated.

Mr. Chambers: Does that take in Appendix D?

Mr. Ransom: Whatever is between those pages.

Mr. Chambers: The defendants object to it as incompetent, irrelevant and immaterial.

The Master: I will receive it.

Mr. O'Brien: Exception.

Document received in evidence and marked Complainant's Exhibit 398.

25040

Q. Mr. Carter, at the time of the consolidation in 1884, when the present company was created, was an appraisal made of the physical properties of these various companies, known as the Rowland Appraisal?

A. There was.

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. And that was the appraisal to which you referred yesterday in connection with the issuance of capital stock at the time of consolidation?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

25041

The Master: Same ruling.

Mr. O'Brien: Exception.

A. It was.

Q. Were the properties of the constituent companies taken onto the books of the Consolidated Gas Company at the time when they were so appraised?

Mr O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Master: Were they what?

Mr. Ransom: Were they carried onto the books, or into the books.

25042 Robert A. Carter, Direct.

The Master: Same ruling.

Mr. O'Brien: Exception.

A. They were carried into the books at the value at which they were appraised by Mr. Rowland.

Q. Was that appraisal made the basis of the issuance of the capital stock of the complainant company in the amount of which you referred yesterday?

Mr. O'Brien: Objected to. Your Honor, I cannot see the point of this.

The Master: Oh, yes; I think it is important. Same ruling.

25043 Mr. O'Brien: Exception.

A. It was.

Q. Are you familiar with the Rowland Appraisal as it was at that time made?

Mr. O'Brien: Same objection.

The Master: Same ruling.

Mr. O'Brien: Exception.

A. I am.

The Master: You need not repeat your objections, Mr. O'Brien, to this line of questions. They will be taken subject to your objections already stated.

Mr. O'Brien: All right, sir.

25044 The Master: You are familiar with it?

The Witness: Yes, sir.

Q. Have you produced here an authenticated copy of the original appraisal as the same has been received in evidence in the various Senate proceedings and in the prior suit?

A. I have.

Mr. O'Brien: Is there any difference, Judge Ransom, between that and the one that is in the printed reports?

Mr. Ransom: Which printed report do you refer to?

Mr. O'Brien: The report you have just offered in evidence.

Mr. Ransom: I think there are a few slight, typographical errors in the copy of the Rowland Appraisal as printed in the Supreme Court of the United States.

Q. Is the original Rowland Appraisal in your custody?

A. It is.

Q. And this is a correct and authenticated copy thereof (handing witness)?

A. It is. 25046

Mr. Ransom: I offer in evidence the Rowland Appraisal.

Mr. O'Brien: It is understood I am objecting to all these questions, your Honor, and taking an exception.

Mr. Chambers: I object to that as irrelevant, incompetent and immaterial. There is no proof here—

The Master: Does your objection go to the point of insisting that the original be produced rather than this authenticated copy?

Mr. Chambers: No. It is incompetent, irrelevant and immaterial, hearsay and secondary evi- 25047
dence. Rowland, if he is living, should be produced for cross-examination; if he is not we are deprived of the right of cross-examining him, and there is no proof that he who made it is dead.

The Master: I will overrule the objections.

Mr. Chambers: Exception.

The Master: Noting on the record that, as I understand it, the objections do not go to the point of insisting that the original appraisal be produced instead of this copy.

Mr. Chambers: We make our objections the same as if he had the original here.

The Master: Yes. You included in your objection the words "incompetent" and "hearsay."

Mr. Chambers: That is correct. We assume he is offering the originals.

Mr. Ransom: We will have to have these separate sections of the report marked separately.

The sections of the report were marked as follows:

Appraisal of Metropolitan Company marked Complainant's Exhibit No. 399a.

Report of Manhattan Gas Light Company
25049 marked Complainait's Exhibit No. 399B.

Report of New York Gas Light Company marked Complainant's Exhibit No. 399B.

Report of Municipal Company marked Complainant's Exhibit No. 399D.

Report of Knickerbocker Company marked Complainant's Exhibit No. 399E.

Report of Harlem Company marked Complainant's Exhibit No. 399F.

Mr. O'Brien: I would like to ask the purpose of the offer, if this is being offered now as a proof of cost or value?

Mr. Ransom: I would like, with the Court's
25050 permission, to clear up that matter of the capital stock.

Mr. O'Brien: Judge, will you answer the question I have asked you twice now—what is the purpose of the offer of this Rowland Appraisal? Is it just as a bit of history?

Mr. Ransom: The offer speaks for itself.

Mr. O'Brien: Your Honor I think it is perfectly proper, if I am required in cross-examination on every question I ask to set up the sign as to what my purpose is, how far it is to go—I think it is a perfectly proper thing for us to ask

25051

counsel, when he digs up some more of this antebellum data, to require him to state what its purpose is.

The Master: No.

Mr. O'Brien: Your Honor only received it in connection with the history of this company?

The Master: No, I received it as proof of cost of this company.

Mr. O'Brien: Is it so offered?

The Master: I do not know. I am taking it.

Q. Mr. Carter, you said yesterday that $39,078,000 of capital stock was authorized in 1884. What were the precise amounts covered by the purposes comprised within this original issue? 25052

The Master: Where do you fix purposes? Where were the purposes fixed?

Mr. Ransom: A certain amount was for tangible property.

The Master: Who said so? Where was it said? What authority said so?

The Witness: It is by consolidation agreement between the companies.

Mr. Ransom: By agreement between the companies.

The Master: All right. 25053

Mr. Ransom: A certain amount was for tangible property as per appraisal. The appraisal is now received. A certain amount was to be for franchises and rights, and the amount was testified to yesterday; a certain amount was to be for what the law called and still calls working capital, and that amount you did not allow me to place in evidence yesterday.

Mr. O'Brien: They can label it what they want, your Honor, but that does not make it evidence in this case, and I object to it.

The Master: If you insist on asking such questions I will have to rule them out.

The Master: What was there, a consolidation agreement?

The Witness: Yes, sir.

The Master: Is that in evidence here?

Mr. Ransom: It is.

The Master: Does that specify these purposes?

Mr. Ransom: It specifies purposes, but not amounts, as I recall it. I am now endeavoring to show the amounts.

25055 The Master: Show them.

Mr. O'Brien: I submit he cannot segregate some of the amounts that were supposed to have been represented by certain shares of stock, and give them a label.

The Master: As I understand it, there was in fact issued to the other companies for their tangible and intangible properties approximately thirty-five millions of capital stock; is that right?

The Witness: Yes, sir.

Mr. Ransom: $35,430,060.

The Master: And the rest of it stayed in the treasury, did it not?

25056 The Witness: For a few months, and I think in April, 1885, the treasury stock was issued and carried in the treasury, and used as collateral for loans.

The Master: Where does working capital come in?

Mr. Ransom: If you will let the witness explain it, you will see.

The Master: Not in that way, no. I am not going to let him characterize it as working capital.

Q. How was the item $39,078,000 made up?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Master: I will sustain that objection.

Mr. Ransom: Exception.

The Master: Let me ask you, Judge, the total authorized capital of the Consolidated Gas Company was $39,000,000; is that right?

The Witness: $39,078,000.

The Master: $39,000,000 is near enough. Out of that stock they issued a certain amount to the owners of the constituent companies, did they not? 25058

Mr. Ransom: Yes.

The Master: How much for tangible property—$29,000,000?

Mr. Ransom: $29,994,000, but with a reservation—that is, they had authorized $29,994,000 but $3,329,000 was reserved to retire obligations of the constituent companies.

The Master: I understand that.

Mr. Ransom: That has not been proved.

The Master: That is because you do not ask your questions so we will understand it.

Mr. O'Brien: These are all the hot house questions, your Honor. 25059

The Master: The trouble is that you have prepared questions here.

Mr. Ransom: I have not prepared questions.

The Master: In addition to the twenty-nine million odd paid for tangible assets, there were approximately seven million dollars paid for the franchises?

Mr. Ransom: $7,781,000.

The Master: That was actually issued to the people who owned the franchises?

Mr. Ransom: Correct.

The Master: Is that correct, Mr. Carter?

The Witness: Yes.

Mr. O'Brien: Is Judge Ransom testifying, your Honor?

The Master: No, I am asking these questions.

Mr. O'Brien: But he is answering all these questions and spilling them into the record.

The Master: I am asking the questions; let us have his claim clear.

Mr. O'Brien: Give us the record, that is all. I do not think it is proper in this case. It does
25061 not tell us the inevitable and eternal story, what is the price of making gas.

The Witness: The stock for the $7,781,000 was issued at once.

By the Master:

Q. To whom?

A. To the stockholders of the constituent companies, and the stock for the $29,994,000 was issued less the amount of the outstanding obligations, for which the balance was reserved.

Q. I thought the total was a little over $30,000,000, and then it was less $2,000,000?

A. $29,994,000.

25062 Q. Less $2,000,000?

A. Less $2,329,000.

Q. That two million odd was reserved to clean up encumbrances on the property when you took it?

A. Exactly.

Q. That left in the treasury something over $3,000,000 par value of common stock, or thereabouts?

A. Yes, sir.

Q. What was the exact amount?

A. $3,647,940.

Q. That was not issued to anybody?

A. That was not issued at that time to anybody, but within a few—

The Master: Never mind. Now, what are you talking about working capital for?

Mr. Ransom: Because of that $3,647,940 there was $1,303,000 of it that had been authorized for working capital.

The Master: By whom?

Mr. Ransom: Under the consolidation agreement.

The Witness: Might I explain that, your Honor? 25064

The Master: No.

Mr. O'Brien: Oh, no.

Q. There was left $3,600,000 odd that was not issued originally?

A. Yes, sir.

Q. And of that there was two million and odd thousand reserved for these encumbrances?

A. Exactly.

Q. The balance was reserved for general purposes of the company?

A. To be sold for cash.

Q. For general purposes of the company? 25065

A. For general purposes of the company, exactly. That is just what it was.

By Mr. Ransom:

Q. What was done with the balance?

A. It was issued, carried in the treasury, and used as collateral for loans instead of being sold. For just what reason I do not recall at the moment.

Q. To provide cash for the company?

A. It was used to provide cash for the company. It started without a nickel in cash.

25066 Robert A. Carter, Direct.

Q. What was the amount issued in 1884?

A. $35,430,060.

Mr. O'Brien: At this time I move to strike out all of the testimony given this morning by the witness.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. Will you state the considerations which led the company to construct the holder known as the Kingsbridge holder at Sedgwick Avenue and Fordham Road?

25067 The Master: Let me hear that?

Mr. Ransom: What consideration led the company to construct that holder.

Mr. O'Brien: I submit, your Honor, that is an engineer's question, if anything.

Mr. Ransom: It is a question of executive policy upon recommendations of engineers.

Mr. O'Brien: Mr. Carter cannot play every part on this team, you know. He knows the works, but not in this case on the record.

Mr. Chambers: I object to the form of the question also.

25068 The Master: In other words, you are asking the question to show the necessity for building it?

Mr. Ransom: Yes, what reason, what circumstances, and what conditions.

The Master: That is better.

Mr. Ransom: What considerations of executive policy.

The Master: What led the company to build the Kingsbridge holder, as tending to show the necessity for it?

Mr. O'Brien: Objected to as incompetent, ir-

25069

relevant and immaterial, especially on the ground that the witness has not qualified as an expert; and on the further ground that whatever their intentions may have been, the only evidence or testimony permissible here would be some engineering testimony that would give your Honor some basis for concluding that placing that there squared with sound engineering policy.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Q. What led the company to build this holder at this point?

25070

A. The holder requirements of the Northern Union Company in the section occupied by the present so-called Kingsbridge holder and the requirements of the Consolidated Company in the adjacent Manhattan territory were what led to the construction of the Kingsbridge holder, but before the property was acquired at Sedgwick Avenue and Fordham Road the Northern Union Company in 1907 had purchased a parcel of land in anticipation of its holder requirements in that section. That was at the corner of Kingsbridge Road and Heath Avenue. Before that holder was constructed the growing requirements of the Consolidated in the adjacent territory in Manhattan led to the conclusion that the requirements of the consumers in that neighborhood would best be met by a holder that would serve the purpose of both companies. When it became known that the construction of a gas holder on the property acquired by the Northern Union Company was contemplated, the property owners in that vicinity protested very violently, alleging that the erection of such a piece of apparatus as that would seriously impair the value of their properties for residential purposes, it being a residential neighborhood.

25071

Mr. O'Brien: I move to strike out that last sentence, your Honor.

The Master: I will allow it. Motion denied.

Mr. O'Brien: Exception.

The Witness: I am just stating a fact, your Honor. The opposition was so vigorous and the likelihood of damage proceedings resulting from the erection of the holder was so much in evidence that—

Mr. O'Brien: Your Honor, we are getting into a realm that is not in this case.

25073 The Master: Motion to strike out denied.

Mr. O'Brien: Why we did not put it in Heath Avenue instead of Kingsbridge Road, and this speculating about damage.

The Master: Let Mr. Carter finish the answer, then if you want to move to strike out you may do so.

The Witness: Another site was sought in that vicinity. Both the Borough of Manhattan in that neighborhood and the Borough of The Bronx was thoroughly canvassed and the only site found available was that at Fordham Road and Sedgwick Avenue. That was owned by an

25074 estate and the block was substantially larger than was required for the company's purposes. It endeavored to buy so much of the plot as would be necessary for the holder site. The owners refused to sell anything less than the entire parcel. They said that the damage done to what was left would be equal pretty nearly to its value to them. Therefore, the company was obliged to take that entire site.

Mr. O'Brien: I move to strike out the whole answer.

The Master: Motion denied.

Mr. O'Brien: I move to strike out that part beginning with the description of the damages that the people thought would come to their property, and the damages that the company feared.

The Master: Motion denied.

Mr. O'Brien: Further, your Honor, it is an entire speculation, it hasn't any place in this case. The justification for placing a holder there must be in engineering principles and not in this witness's statement as to what was available.

The Master: Motion denied. 25076

The Witness: It was not engineering principles at all.

The Master: Nobody asked you for anything, Mr. Carter.

Q. Prior to the construction of the Kingsbridge holder, Mr. Carter, had it been the experience and judgment of the officers of the company that the Washington Heights neighborhood, and the upper end of Manhattan, was adequately served from the 132nd Street and Inwood Holders?

A. We were advised—

Mr. O'Brien: I object, your Honor, and I now call your attention to the examination that I had when Mr. Addicks was on the stand, and Mr. Gawtry, when I endeavored to find out the policies and debates and the discussions and the reasons for or against propositions adopted by the executive committee, and I was shut off, I was not allowed to go into it. 25077

The Master: Because it was not proper cross. Now, it will be. Go ahead and finish your answer.

The Witness: The Engineering Department reported that the 5,000,000 cubic feet holder at

132nd Street west of Broadway was not adequate to carry the proper pressure in the territory in the Borough of Manhattan up in the northwesterly section, and also to supply the requirements of the Northern Union Company for the section —the immediate adjoining section of the Bronx.

Q. And the demands of that northern end of the island were increasing?

A. Rapidly growing, owing to the development of the building operations in that section.

Q. Was the location of the holder on the Heath
25079 Avenue site opposed by the local civic organization?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Master: Didn't Mr. Carter already say that people around there objected to it?

Mr. Ransom: So far as property owners he did.

The Master: Well, what is the difference?

The Witness: It was by civic organizations, also. It was generally opposed.

The Master: People up in that section did not want it?

25080 The Witness: They did not want it, your Honor.

Mr. O'Brien: Shades of Lem. Quigg?

The Master: You have that trouble everywhere, don't you, with a gas plant?

The Witness: We do, excepting in this site, your Honor, where the holder sets down on about a level with the Harlem River, and when it is fully inflated it is not particularly conspicuous or offensive, because it does not come above the level of the property to the east of it.

25081

Q. In this new location, were you able to get the consent and approval of the same organizations that had opposed the other site?

Mr. O'Brien: Objected to. Lem. Quigg's spirit is still stalking, your Honor. Property owners associations—I object to it.

The Master: Overruled.

The Witness: We did not construct that holder until we had satisfied all the parties interested in that neighborhood, institutions and civic organizations, that it was not going to be objectionable, and that we would paint it an unobjectionable color to them.

25082

The Master: What is that color?

The Witness: Well, it was green, a kind of a green color, thinking it would match the foliage around there.

Mr. O'Brien: That shows the octopus in a wonderfully benign attitude.

The Witness: Later we adopted an aluminum paint, your Honor, which we consider as probably the least objectionable of all colors for holder purposes.

Q. Has the low level of this site any advantages from the viewpoint of maintaining pressure in the territory supplied?

25083

Mr. O'Brien: That is objectionable, your Honor.

The Master: I won't take that.

Mr. Ransom: Exception.

Q. Will you explain the organization and purposes of the utilization department of the company?

Mr. O'Brien: Your Honor, I submit that that is not a subject of expert testimony. The witness has not qualified as an expert.

Mr. Ransom: I did not ask him for expert testimony.

The Master: I will take it. Mr. Carter is one of the officers of the company, and if he wants to testify to the necessity for the utilization department, I will take it.

Mr. O'Brien: Exception.

The Witness: The utilization department was—

Mr. Ransom (interrupting): It is the thing that is in his charge, he is the man who does know.

The Witness: It was a department that was created at my own recommendation, by action of
25085 the executive committee. The executive committee appointed an engineer of utilization at a meeting held in December, 1912. I would be very glad to read the resolution that was adopted at that meeting, if you wish.

The Master: Do not read it unless one of the defendant's counsel asks for it. There was a resolution adopted?

The Witness: There was a resolution adopted fully setting forth the duties that were delegated to the engineer of utilization.

Q. State the various functions that have been fulfilled by this department?

25886 Mr. O'Brien: I object to it as calling for legal conclusion.

The Master: No.

Mr. O'Brien: Whether they fulfilled functions.

Mr. Ransom: I am asking for the facts.

Mr. O'Brien: Well, you are asking whether they fulfilled functions.

The Master: What did they do day by day?

The Witness: Their duties are the investigation of all appliances designed for the use of or utilization of gas for domestic, commercial or industrial purposes, all new types of appliances.

Mr. O'Brien: It has to do with appliances only, Mr. Carter?

The Witness: Appliances of all kinds; to keep informed regarding the invention of new appliances and those that are offered or recommended for sale or for use in our rental system. They are supposed—the department studies the existing appliances with a view of modification, alteration or improvement, to improve the efficiency or to improve the economy resulting from the use of the appliance. The department renders advisory assistance to the canvassing department, 25087
to the selling department, to various industries in the city which require gas for industrial purposes. Gas is used for a great many purposes in very large volume. Some of the newspapers use—

Mr. O'Brien: They use it, I know that, we found that out since we got into this case.

The Witness: In connection with the type melting, and that sort of thing. It develops the utilization of large units in hotels and large industrial establishments.

The Master: Well, it generally promotes the use of gas? 25089

The Witness: Yes. And consults with architects and builders arranging the piping of buildings for gas, which otherwise would not be piped, and according to our theory would be less available for rental purposes than if provided with facilities for the use of gas for industrial purposes. Those are the kind of activities.

The Master: It goes into everything that will increase the sale of gas?

The Witness: Yes, sir.

Q. And helps existing customers to use gas to better advantage?

Mr. O'Brien: I object to both the testimony of the Master and of Judge Ransom.

Mr. Ransom: I am asking a question.

The Witness: They both do it better than I can, Counselor.

Mr. O'Brien: Mr. Ransom has to hand his testimony to every one of his witnesses, the poor, weak, patient witnesses, he has to prop them up.

Q. How many employees now comprise the department of utilization?

A. There are 22 in all.

25091 Q. Who are they? That is, what are their positions or duties?

The Master: The titles generally.

The Witness: Well, an engineer of utilization and an assistant, six staff engineers with an assistant each, the laboratory engineer, two testers and a mechanic and four clerks who attend to the stenographic and clerical work of the department.

Q. Is the department divided into various bureaus, and if so, what are the different bureaus and their respective duties?

A. They have an industrial bureau; a hotel, restaurant, club and water heater bureau; a domestic
25092 house heating, steam boiler, and what they term a Peerless range bureau. That all comes under the domestic utilization of gas. And an illuminating bureau. They also have a data bureau for the collection of cost data on these various domestic and industrial installations, so that they are able to present to any prospective user of gas for industrial purposes or for large heating units, a very accurate forecast of the cost of heating by gas as compared with heating by other means. There is a general bureau, the duty of which is to look after appliances not directly gas consuming, but more or less connected with it. They

keep track of oil consuming devices—kerosene they look after coal ranges and keep informed as to the efficiency of coal ranges, in order to be able to make comparisons, and they collect data of that kind. They look after all competitive fuel appliances which in any way threaten the ulitization of gas.

Q. To what extent does this utilization department investigate and test and inquire about new appliances?

The Master: I think he has covered that. He has told us that.

Q. What does the company do to protect itself and 25094
its consumers with respect to new appliances which are offered by concerns which have appliances for sale?

Mr. O'Brien: That is offensive work?

Mr. Ransom: No.

The Witness: No, this is testing work, counselor, and is designed to establish that the appliance is suitable from the standpoint of its efficiency and its economy and its safety, particularly its safety—safety in the point of construction, that is that it won't break down in use; and safety in respect of its construction also, as an insurance against leaks and possible explosion and that 25095
sort of thing. They of course have to investigate all appliances offered either for sale or rental, in order to determine that if they are displayed in our branch offices they will be promptly delivered, and that the party offering them is in a position to meet the requirements which may result from our exploitation of the appliance. The matter of the location of the point of manufacture, the cost of freight, the fact that appliances and repair parts can be obtained readily, are considerations that influence the determination of

this bureau of utilization in making its recommendations to the executive officers of the company. And no appliance is sold or rented by the company for domestic or industrial purposes which has not passed all of those tests as well as a test upon the district in actual use and actual production.

Q. Does this bureau also have to inquire as to the patentable features, that is, whether a new appliance which is offered by a manufacturing company for sale through the medium of this company, would not subject this company to suit for infringement of patents?

25097

A. That is also a matter investigated by the Utilization Department.

Q. And each appliance before it is put out to the public is tested both in the laboratory and on the district?

A. Yes, sir.

Q. Do the duties of the engineering staff of the Utilization Department include the giving of lectures and instruction to salesmen and stock men?

A. They do.

Q. And individual instruction to mechanics out on the different districts?

25098

A. Yes, sir.

Q. Does the department also prepare for publication articles both popular and technical upon gas subjects and the like.

A. They do, for the popular trade and technical press; and they also co-operate with the national associations in the preparation of advertising matter that is of a general informative character, and booklets and illustrated pamphlets and matters of that kind.

Q. That will help the public to use the gas more efficiently and economically?

A. And inform them of the most perfect and effi-

cient appliance available for any given purpose and there are thousands of them at the present time, at least a thousand uses to which gas is put.

Q. What has the Architectural Bureau to do with this Gas Appliance Department?

A. The Architectural Bureau offers its services to architects who desire assistance in laying out the piping of new buildings or buildings that are undergoing alterations, and its services are quite extensively availed of.

Q. Will you please state the plan of organization of the Gas Appliance Department? 25100

A. The Gas Appliance Department is a division of the Commercial Department, and is the sales organization of the company.

Q. And canvassing?

A. And canvassing. As well as at the various branches, sales on the district through canvassing. It has three divisions, a Hotel and Restaurant Division and Industrial Division and a Lighting Division. Each of those is independently organized and has its division head and his assistance and organization and sales room, each specializing in their particular line of appliances.

Q. And at each of the branch offices is there a local Gas Appliance Department? 25101

A. There is a display room, and that is in charge of the Branch Office Superintendent, but it is also more or less supervised by the head of the General Office Gas Appliance Department.

Q. Is it your experience that the promotion of the use of the various gas appliances through the activities of the Utilization Department and the Gas Appliance Department results in an increase in the sales of gas to the Complainant Company?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial, it is entirely speculative.

The Master: No, he says—I take it that Mr. Carter is prepared to say, "We can state it as a fact based upon experience and observation." I will allow it.

Mr. O'Brien: But this is a matter that may be shown by correct testimony.

The Master: What is correct testimony?

Mr. O'Brien: This is speculation.

25103 The Master? What would be correct testimony?

Mr. O'Brien: I cannot outline it. There was a time when they did not have appliances. There was a time when the population of the City was less than it is today. The increase in the consumption of gas, so far as I know, would speak something, wouldn't it? If the gas has increased more than the rate of population has increased in a given period, some deduction might be drawn from it. That increase would be chargeable to many causes, but if you give a man here a blanket statement—

25104 The Master: I will let Mr. Carter make the statement if he believes he is justified in making it.

Mr. O'Brien: What I am objecting to particularly now is there is no foundation laid for it.

The Master: I will take it.

Mr. O'Brien: He is not qualified here as an expert.

The Master: Well, he is qualified a little bit. He has been in the gas business since 1877, secretary of this company since 1884, and probably

knows a little bit more about the business than you or I do anyhow.

Mr. O'Brien: Well, I submit that no good can come from a general question and general answer of that kind.

The Master: Then you break it up on cross-examination. I will take Mr. Carter's statement now that the Utilization and Canvassing departments, or whatever it is called, does help the sale of gas, if that is his statement.

Mr. O'Brien: That question is more general than that, your Honor. Read the question. 25106

(The question was read by the reporter.)

The Master: I will take the statement. Objection overruled.

What is your statement, Mr. Carter?

Mr. O'Brien: Exception.

The Witness: That the sales of gas, your Honor, would not only not increase, your Honor, but would very substantially decrease, and decrease very rapidly if it was not for the intensive development of the use of gas for other than illuminating purposes.

The Master: Do I understand your statement to be that you have got to keep at people to keep 25107
them using gas and not switching to something else?

The Witness: No, they will switch to something else, your Honor. They switch to electrical illumination, and we have to make up that loss in sales of gas for illuminating purposes by sales of gas for domestic and industrial purposes. The sales of gas per consumer are no greater today than they were in 1884. We sold 36,000 cubic feet per consumer per annum in 1884, and we are selling only 36,000 cubic feet per consumer

today. In 1884 I do not believe there was a gas appliance in use of any sort, kind, class, description or character, because gas companies then were known not as gas companies but as gas light companies. Since that time we have practically lost our illuminating business. There isn't a big institution that uses gas for illuminating purposes, and still in the average big hotel that 30 or 35 years ago used nothing but gas for illuminating purposes, because they could get nothing else, electricity had not begun to develop
25109 in 1884, they are not using gas at all for illuminating purposes today, but they are using more gas in their kitchens now than they used then for illuminating purposes, and they did not use a cent's worth of gas for kitchen purposes at that time, so there has been an entire change in the nature of the business.

Mr. O'Brien: It is a matter of life and death to have this utilization department.

The Witness: The company could not remain in business without the utilization division, unless it was able to collect two dollars or three dollars a thousand cubic feet for gas.

25110 The Master: You don't expect that just yet?

The Witness: We don't expect that yet, at least we are fighting it off as long as we can.

Q. Especially in the last year or two, Mr. Carter, has there been a marked increase in the use of gas for heating?

A. There has been. In the last two months the company has sold 20,000 heating appliances.

By the Master:

Q. There has been rather substantial development in the gas radiator, hasn't there?

A. Yes, the gas radiator, we cannot begin to supply

the demand. The manufacturers cannot turn them out as fast as our customers are demanding them.

Q. Are they efficient?

A. They are deemed very efficient.

Q. Do they smell?

A. No, sir, they do not smell. The people seem to be very well satisfied with them.

Q. That is a recent development?

A. One of the more recent developments.

By Mr. Ransom:

Q. About how many appliances a day is the company now selling for heating purposes? 25112

A. Well, five hundred a day. I do not think we can keep it up, I don't think we can get them from the manufacturers; but during the cold spell in the winter of 1917-18, we sold as many as a thousand heating appliances a day.

Q. And is this increase in the use of gas for heating, now having the effect of increasing the maximum requirements of the company?

Mr. O'Brien: Judge, you had better tell us what you mean by requirements.

Mr. Ransom: I mean the total quantity of gas.

Mr. O'Brien: The Master, I fear I might not know. 25113

The Master: Don't fear, don't be worried about that.

Mr. O'Brien: But they are using this term "requirements," and it has a peculiar meaning.

The Master: Don't let that worry you.

A. The development of this winter heating business may disarrange the relationship between our maximum requirements and our volume of annual sales, because it is not an all the year business. It is a seasonable business, and comes on at the time, of course, of our maximum demand. All of this other business,

this cooking business, and industrial business, is an all year round business. The heating business has spread out more and more, and we rather hope that we will get perhaps four or five months. It is so convenient that people are likely to use gas instead of other means of heating, for example, early in the fall, and continue late in the spring.

The Master: Your utilization department does not try to get the people to do that, is that the idea?

A. That is the idea. The point the Judge makes
25115 is that that means a little less volume of sales per unit of capacity than would be the case with an all year business. That is the point, I think.

The Master: You are at the peak of the demand in the winter, and you might require a disproportionate amount of plant capacity?

The Witness: That is the point.

Mr. Chambers: You had better not do that if you are going to try to raise the price of gas, let me suggest that.

The Witness: We take your suggestion.

Mr. O'Brien: I move that the last two or three questions and answers be stricken out.

25116 The Master: Motion denied.

Mr. O'Brien: Exception.

Q. During the period 1909 to 1915, Mr. Carter, how much did the combined sales of the Consolidated Gas Company increase?

A. For the Consolidated Company alone the increase was 1,381,000,000 cubic feet, or 2.5 per cent, that is, during a period of six years, or an average of about .4 of one per cent per annum.

Q. That is the total amount of gas sold by the Consolidated of the different kinds of services rendered?

A. That was the increase in the annual sales during

that period, which amounted, as I have said, to .4 of one per cent per annum, notwithstanding that there was an increase in the number of meters in use during that period of 42,000 meters, which alone would be the business of a good sized gas company. The meters increased at the rate of two per cent per annum.

Q. And the sales increased at the rate of .4 of one per cent per annum?

A. Exactly, and during the same period there were rented and sold by the Consolidated Gas Company 332,450 appliances. We estimate that those appliances should have consumed annually about six billion cubic 25118
feet of gas, and all we gained was 1,381,000,000 cubic feet. In other words, we would have lost an enormous volume of sales but for the installation of those appliances—it just simply kept us going.

By Mr. O'Brien:

Q. You would have had to have gone out of business, would you?

The Master: Don't answer that, Mr. Carter; I cannot permit this interruption.

By Mr. Ransom:

Q. What effect would any such decrease in the company's annual sales have had upon the cost per thousand cubic feet of making and distributing gas to 25119
the company's consumers?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial. It calls for a surmise or guess, and is too indefinite and uncertain.

The Master: I will hear the witness' answer.

Mr. Chambers: Exception.

Mr. O'Brien: Exception.

A. The effect of a diminution in the volume of sales would be to greatly increase the distributing expenses and taxes, and expenses of that character, and the cost of carrying the investment expressed in

terms of per thousand cubic feet, very substantially. In other words, I say we have maintained an average volume of sales of 36,000 cubic feet per consumer per annum. If that volume of sales were cut in half on the average, it would mean that all the expenses except the manufacturing cost would be doubled.

Q. Per thousand cubic feet?

A. Expressed in terms of a thousand cubic feet of gas sold.

The Master: Next question.

By Mr. O'Brien:

25121 Q. Is the converse of that true?

The Master: Do not answer. Mr. O'Brien will have his chance later.

By Mr. Ransom:

Q. What are the present sales of gas per gas consumer as compared with what they were in 1884?

A. I stated that; they are practically the same.

Q. In 1884 did the gas companies do nearly all of the street lighting in the city of New York?

A. They did all of it. Today we don't have any street lights at all, they have all been turned over to the electric companies. I have some figures in the last ten years that might answer your question. Beginning

25122 with 1908 to 1918, inclusive, the Consolidated Company sold in 1908, 14,381,174,000 cubic feet. In 1918 it sold 18,029,245,000 cubic feet. That is an increase during the ten years of 3,648,071,000 cubic feet per annum.

During this period there were installed by the company on the district 527,152 appliances, and it is estimated that there were installed through other agencies than the company, through the direct activities of dealers and manufacturers, about 15 per cent of the number sold and rented by the company. It is estimated that these appliances consume on the average

about 16,000 cubic feet of gas per annum, which would produce a volume of sales of 9,700,000,000 cubic feet. As there was an increase in the annual sales during that period of 3,648,071,000 cubic feet, it must be assumed that there was a loss in the volume of sales due to the substitution of electric illumination for gas illumination of over six billion cubic feet of gas per annum.

During this period the gross revenues of the electric light company operating in the Borough of Manhattan alone increased eleven million dollars per annum.

Q. Mr. Carter, out of the eighteen billion cubic 25124
feet of gas sold by the complainant company, about how much is computed to have been used through appliances sold or rented?

A. I would not like to give that figure. I don't know, we have not computed it, but I should say it was a substantial percentage of it.

The Master: About 60 per cent?

The Witness: I should say easily 60 per cent.

Mr. OBrien: For the purpose of the record, I move to strike out that part of the last two answers which dealt with estimates and not with concrete facts.

The Master: Motion denied. 24125

Mr. O'Brien: Exception.

Q. How many gas stoves have the Consolidated Company on rental?

A. 244,933.

Q. That is the Consolidated alone?

A. The Consolidated alone. The Consolidated and its allied companies combined have 476,377 appliances rented.

Q. In addition are there several hundred thousand other appliances than the stoves that are not rented?

A. There are, that have been sold by the company.

They are sold outright and are owned by the consumers.

Q. Are there other appliances than stoves that are rented?

A. No, that covers all of it.

Q. What is the number of customers of the gas companies as compared with the electric companies in Manhattan and the Bronx? How many consumers has the Consolidated and its affiliated companies?

The Master: How can Mr. Carter give the number of consumers of the Consolidated as com-

25127 pared with the electric companies?

Mr. Ransom: Those are matters of record.

The Master: Where?

Mr. Ransom: Public Service Commission figures, 130 East 15th Street.

The Master: If the defendants object to the question I will sustain the objection.

Mr. O'Brien: I do not object to it.

A. The number of electric consumers is 365,000. The Consolidated and its allied companies have 886,000 consumers, indicating that there is still room for the development of the electric business at the expense of the gas business in the territory of the Con-

25128 solidated and allied companies.

Mr. Chambers: I move to strike out where he said it leaves room for development of the electric business at the expense of the gas business.

The Master: No, I will let it stand.

The Witness: They are doing it every day.

Mr. Chambers: Exception.

Q. What inspection is made by the complainant company of gas appliances on rental, and by whom?

A. The gas company maintains a corps of experts who made 28,378 hotel and restaurant inspections during 1918, and fifty women demonstrators, experts

in domestic science, who instructed 168,000 customers in the most up-to-date method of using domestic gas appliances. That is during the year 1918.

By Mr. O'Brien:

Q. Was that charged to promotion expense?

A. Charged to the gas appliance expense of the company.

By Mr. Ransom:

Q. What is the publication known as "Gas Logic"?

A. It is a publication that we started in 1906. It contains much that is interesting and instructive to gas consumers. It includes recipes for cooking. It 25130
furnishes a convenient medium through which we can inform our customers as to the latest types of appliances, cooking recipes—

Q. Cooking by gas?

A. Cooking by gas, lighting information, or information respecting light units, illustrated advertisements, and matter of that kind.

Q. Information developed by the utilization and gas appliance department?

A. New developments in the utilization of gas for illumination or for domestic or industrial purposes are brought to the attention of the company's consumers through that medium, among others. 25131

Q. What is the approximate circulation of the magazine?

A. About 45,000 copies a month.

Q. Is this a copy of the magazine?

A. Yes, sir.

Mr. Ransom: I would like to have that marked for identification.

Copy of magazine marked Complainant's Exhibit 400 for identification.

By Mr. O'Brien:

Q. Have you got the mailing list with you?

A. No, sir.

Q. Will you send up for it during recess?

By Mr. Ransom:

Q. On page 3667 of the record of November 10, 1919, Mr. Brundage was asked on cross-examination whether he and the accounting department kept the books for other companies with respect to promotion expenses and advertising. Please explain the extent to which such expenses are carried by the Consolidated Gas Company for other companies, and to what extent bookkeeping is necessary on that account?

Mr. O'Brien: I object to it as incompetent,
25133 irrelevant and immaterial. The books are in evidence that would form the basis of the statement of the witness. I object to any generalization on the matter.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. The bookkeeping expense is negligible. The promotion expense, most of it, the advertising and that sort of thing, would have to be incurred by the company in any event. The fact that the other companies benefit by it equally with the Consolidated Company reduces the amount of expense to all parties concerned very substantially. All advertisements
25134 name all companies and name all gas offices, and all of the promotive work is what you might call joint and mutual benefit. The company really saves whatever it collects from these other companies of that character, and the expense of billing it, as I have stated, is negligible.

Q. By being able to bill a part of the cost of each advertisement to the other companies the Consolidated's own advertising cost is very substantially reduced?

A. That is true.

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. O'Brien: That is a mathematical proposition.

The Master: Objection overruled.

Mr. O'Brien: Exception.

The Master: His statement is that, whether they collected from the other companies or not, they would have to do the same work, and what they get from the other companies is velvet. That is his argument.

Mr. O'Brien: Velvet is good.

The Witness: It goes to reduce the cost of gas 25136
to the consumers of the Consolidated Company.

The Master: Next question.

Q. Mr. Teele was interrogated yesterday by Mr. O'Brien concerning an entry in the superannuation account, at folio 939 of the 1918 ledger, in which it appeared that the Central Union Company was billing to the Consolidated Company $26 a month, charged to the superannuation account. Do you know the employee who is involved in that entry?

A. Yes, I do.

Mr. O'Brien: This is Central Union?

Mr. Ransom: Yes, Central Union.

Q. What was his name? 25137

A. Dinnen.

Q. Formerly employed by the Consolidated?

A. He has worked for both the Consolidated and Central Union Companies.

Q. A very old man?

A. He is a very old man, and really entitled to superannuation and an annuity. It was offered to him. He protested against being obliged to cease his connection with the company and accept an annuity that was not substantially less. I think somewhere about 60 per cent of what he had been receiving, so that it

was agreed that he remain at work for the Central Union Company and do such light work as he might be able to perform at the fitting shop of that company, and that the Consolidated Company would pay half the amount that he was entitled to as a superannuated employee, which was $26 a month. That we paid to the Central Union Company.

Q. That is, part of his long period of service had been with the Consolidated and part with the Central Union?

A. Exactly so.

25139 Q. And he lives and has lived near the Central Union office in the Bronx where he now reports for work?

A. That is my understanding.

Q. Mr. Teele was interrogated yesterday at page 6294 of the record (mimeograph copy) by Major Clark with respect to a $19,000 item as to gas transferred, the change or readjustment, 1916 and 1917, made in 1918. Can you explain as to that item concerning which Mr. Teele was asked by counsel for the Commission?

The Master: Made in June, 1918.

Mr. Ransom: Yes.

25140 A. I remember the circumstance of that adjustment being made. It grew out of the fact that during the period covered by the adjustment, the amount paid by the Consolidated Company to the New Amsterdam Company for gas transferred was computed on the basis of the Consolidated manufacturing cost instead of the New Amsterdam manufacturing cost. In other words, the New Amsterdam received a credit memorandum from the Consolidated Company computed at the Consolidated cost. That would only have been justified if the Consolidated had been a creditor company and that amount paid to the New Amster-

dam Company was for a smaller volume of gas than the New Amsterdam Company received from the Consolidated Company. But that was not the case. The Consolidated Company was the debtor company and should have paid for the gas transferred by the New Amsterdam Company at the New Amsterdam Company's own holder cost.

Q. There had been a change in the status of the New Amsterdam Company?

A. There had been. Prior to the date or period covered by this adjustment—

Q. 1916. 25142

A. (Continuing.) The New Amsterdam had been a debtor company, and that practice had been perpetuated beyond the period when that condition of affairs existed. It was an oversight, a clerical inadvertence, and when our attention was called to it we made an adjustment of the matter and paid to the New Amsterdam Company the difference between the value of that gas transferred, computed at the Consolidated holder cost and computed at the New Amsterdam holder cost.

Q. By whom was attention called to this matter at that time?

A. It came to our attention through an inquiry di- 25143
rected by the Public Service Commission to the New Amsterdam Company, designed to develop the reason, apparently, why the New Amsterdam was selling gas to the Central Union Company at one price and to the Consolidated Company at another price

Q. And in going over the matter at that time the Commission found and called attention to this inadvertence?

A. No, they did not find it out. The moment they raised that question—

Mr. O'Brien: Did you call it an inadvertence?

A. (Continuing.) We found out ourselves what the trouble was and corrected it.

Q. And that was this item of $19,000?

A. That was the item. I do not know what the amount was. I know the incidents, and while that was the $19,000, I think only $14,000 was a charge against profit and loss account, I think the rest of it was a charge against the current year. I may be mistaken about that, but that is my impression.

Q. Mr. Teele was interrogated yesterday by counsel for the Commission with respect to a quantity of
25145 coal. That was on page 6289 (mimeograph copy) of yesterday's record, Item 1203 in the operating ledger for 1918, a quantity of 21,000 tons of coal, amount involved $71,871.78, coal at the 14th and 42nd Street plants which had been purchased in prior years at a lower price and sold to the New York Edison Company at the market in 1918. Did that transaction come to your attention at the time so that you were familiar with the reasons for the ledger entry?

A. It did come to my attention at the time.

Q. Will you state the circumstances as you recall them?

25146 A. I have not had an opportunity to refresh my recollection since and I do not recall the figures, but I do recall the principle involved in the consideration of the matter. My understanding of the question raised by counsel yesterday, which I heard, was that there was a credit to profit and loss account which should have been applied by Mr. Teele to diminishing the expenses during the period covered by certain exhibits from 1906 to 1918 inclusive, Mr. Teele, as I understand, having treated that as a non-gas item or a non-operating item of profit.

Q. That is, he had not credited that to the cost of

making gas at 14th Street or 42nd Street during that period?

A. Yes. As a matter of fact Mr. Teele could not have done so, and I have no doubt that at the time he fully informed, his mind about it.

Q. What are the facts about it?

A. The facts about it are that there was no coal used at either of those stations at a higher price than was obtained from the Edison Company—or higher price, rather, than was paid for the coal which was sold to the Edison Company, and therefore there was no occasion, there was no item of expense to which 25148
that profit could be credited or applied. In other words, there was no excess expense incurred by the Consolidated Company at 14th Street or at 42nd Street which would properly be offset by the profit realized from that sale of coal. It had nothing to do with the company's operations, its gas operations, whatever, during any period.

Q. And, that is, at no time during 1918 was any coal used at 14th or 42nd Street which had cost more than the coal sold to the Edison Company? A. That is the case.

Q. The last question was, How long has the Consolidated Company operated the restaurant in con- 24149
nection with its office building?

A. The restaurant was opened on July 6, 1914.

Q. Can you give us an idea of the average daily patronage during that time?

A. Well, it started with an attendance of about a thousand employees, and the attendance I believe approximates that figure today. For a while it dropped off, and then it picked up again.

Q. What considerations and conditions led the officers of the company to establish this restaurant for gas company employees?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Chambers: Not the best evidence.

The Master: Overruled.

Mr. Chambers: Exception.

Mr. O'Brien: Same objection, your Honor.

The Master: Same ruling.

Mr. O'Brien: Exception.

The Witness: The company considered that it was conserving not only the health and convenience of its employees or the employees in the
25151 building in furnishing a wholesome lunch at a reasonable price in a neighborhood that was not particularly well provided with restaurant facilities, but that there was a decided advantage to the company in having its employees in the building during working hours, and during the noon hour, particularly heads of departments who at any time might be called upon in connection with the company's business, which is a public service.

Q. That is so that they could be reached by telephone or otherwise or called to the offices during the lunch hour?

25152 A. Exactly. And the company believes that the employees who do avail themselves of it aprpeciate it and that it has its effect on the morale of the men, gives them an opportunity to get together, and it furnishes opportunities and facilities for the exchange of information between departmental heads and makes generally for the harmonious conduct of the company's business.

Mr. O'Brien: That is, Cupid has a chance of working over the table?

The Master: You need not answer that.

Mr. Chambers: It deprives them of the fresh air which they would get if they walked out for their lunch.

The Master: You need not answer that.

Q. Mr. Carter, are the computations of the gas transferred between the affiliated companies, station costs, etc., checked by you or under your direction and in your department?

A. They are checked under my direction by members of my staff.

Q. And these computations come continually to you and are made under your direction? 25154

A. They are, yes, sir.

Q. Will you briefly describe the method by which this checking is made? How are the statements as to the output of gas checked?

A. The output of the gas of all of the companies is reported to the Manufacturing Department of the Consolidated Gas Company; their hourly output and their daily output and their monthly output and the quantity manufactured, the quantity in storage, is a matter of record in the Manufacturing Department, so that so far as the output of gas is concerned of each station, the Consolidated Company has those figures in its own files. The sales of each company, 25155 of course, are reported to my department as well as the cost of manufacturing, and also the quantity of gas used for its own purposes by each company.

Q. And are all these checked with the accounting records of each allied company?

A. They are checked with the accounting records of the allied companies.

Q. That is, that is done by you and by members of your staff under your direction?

A. Exactly.

25156 Robert A. Carter, Direct.

Q. By reason of your duties, have you been familiar with the requirements of the complainant company for working capital?

A. I have been, yes, sir.

Q. Were you in 1905 and 1906?

A. I was.

Q. You testified on this subject in the prior trial?

A. I did.

Q. What were the items of working capital as of December 31, 1905, which you regarded as necessary for the purposes of the gas business of the company?

25157 Mr. O'Brien: I object to this as incompetent, irrelevant and immaterial, that this calls for opinion testimony, that there is no foundation laid for it, that the only questions which may be addressed to the witness are questions as to facts in the financial history of the company. When he asks the witness as to what were the requirements of the working capital, he is asking the witness to state what you are here to determine yourself, your Honor, that is a conclusion to be drawn from all the facts in the case as presented, and he may not substitute his opinion for the decision of the Court.

25158 Mr. Ransom: The purpose of the testimony as to working capital as to 1905 is, of course, only this: there has been the contention made in behalf of the defendants, in reply to which we have prepared certain exhibits, that during the years from 1905 down to the present time the earnings of this company have been large and excessive, and that a considerable return has been earned upon the property of the company and its investment on which it was entitled to earn a return.

Mr. Chambers: That is true.

Mr. Ransom: Now, in order to give some information of what has been the company's property and investment during that period, we have submitted not only figures showing the expenses and the earnings and the net earnings over that period, but also proof which gives your Honor a basis for judging of the company's property investment during that period. One of the elements in the company's working capital is the item which is known to law in the courts as working capital, which is made up of cash and the materials and supplies and all accounts receivable ap- 25160
plicable to the gas business. Of course, those elements of working capital are ascertainable from the company's books, but there has been furnished to the defendants statements showing the working capital of the company as per those books. There has been received in every case with which I am familiar, the judgments or statements of fact of the financial officer of the company as to what he regards—

The Master: The trouble is Mr. Carter is not the financial officer of this company.

Mr. Ransom: Well, he is vice president and continuously in charge with respect to financial 25161
matters.

Mr. Chambers: No, he is not the financial officer.

The Master: I won't take Mr. Carter's testimony on that.

Mr. Ransom: He has testified that he handled the financial affairs of the company.

The Master: I won't take it.

The Witness: I am prepared to say so.

Q. What is your relation in connection with these various departments to which you have testified as to

what may be regarded as the finances of the company—what is your relation, what do you do?

A. Why, I have had to do with the finances of this company for a great many years. I have had to forecast its financial requirements, I have had to plan and recommend the means of providing for the company's financial requirements, and not only the financial requirements of the Consolidated Company, but the financial requirements of all its affiliated companies.

The Master: What does your treasurer do?

25163 The Witness: The treasurer's business is defined in the by-laws of the company, and has to do with the custody of the actual cash funds in the company's possession. He has nothing to do with the matter of financing the company.

The Master: Is he nothing more or less than a cashier?

The Witness: I would not say that, because he is not a cashier; he is a treasurer.

Q. He is the receiving and disbursing officer?

A. He has charge of the receiving and disbursing facilities of the company, and they are very extensive, and the amounts involved are very large.

25164 Q. Is the matter of the issuance of securities under your jurisdiction, of course under the board of trustees and the executive committee?

A. It is.

Q. And the matter of loans?

A. Yes.

Q. And the matter of providing and seeing to it that the cash on hand is adequate for the working purposes of the company?

A. That is the case.

The Master: I will overrule the objection on Mr. Carter's statement.

Mr. Chambers: I make the same objection.

The Master: The same ruling.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

Q. What was the amount of materials and supplies as of December 31st, 1905?

A. $616,475.08.

Q. And the amounts of accounts receivable as of that date?

A. $2,000,000.

Q. And the amount of cash?

A. $1,000,000.

Q. Those being the things requisite as working capital for the company's business at that time? 25166

Mr. O'Brien: Now, he is asking the witness for a conclusion.

The Master: I will take the witness's opinion as the officer in charge of the finances of the company, whether that was in his opinion requisite at that time.

Mr. O'Brien: It has been shown that the finances of this company, and the control, is in the executive committee, and so far as we know Mr. Carter is not a member of that committee.

The Master: I will take Mr. Carter's statement. Objection overruled. 25167

Mr. Chambers: May the same objection be made to all these questions on working capital?

The Master: Yes.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

A. Yes.

Q. Those are the elements for which in your judgment and experience working capital ought to be provided as of that date?

Mr. Chambers: The same objection.

The Master: Same ruling.

25168 Robert A. Carter, Direct.

Mr. Chambers: Exception.

A. That is so.

Q. Making a total of $3,616,470.08?

A. Yes, sir.

Q. As of the end of December, 1918, what in your judgment was the amount of materials and supplies for which provision should be made in working capital?

Mr. Chambers: Same objection.

The Master: Same ruling.

Mr. Chambers: Exception.

25169 A. $1,532,891.

The Master: What is that, the amount on hand?

The Witness: That is the amount on hand of materials and supplies.

Q. That was the book item?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial, and on the further ground that these facts have not been shown in this case, and that the books do not give a foundation for the question that has been asked, no inventories have been produced, no witness has been produced to justify any statement as to

25170 the amount of materials on hand at any period. I submit, your Honor, that the whole scope of the witness Woods' testimony is silent upon that matter; that the witness Teele has not given us anything, and if he had it would have been inadmissible because the schedules are based on unproved records. Mr. Brundage's testimony did not touch it at all. Mr. Addicks did not, Mr. Gawtry did not, and as for poor little Aldrich, his testimony, while of a birdseye character, was confined practically to Exhibit 178, so that we haven't anything here that may be made the

foundation of an opinion on the part of this witness.

The Master: Objection overruled.

Mr. O'Brien: Exception.

The Master: As I understood it, you say that there was on hand December 31st that much material?

The Witness: That much material. I accepted that as the basis.

The Master: What were the bills receivable?

The Witness: The bills receivable were $1,594,995.23. 24172

Q. That is, of the total accounts receivable of the different kinds as per the book, you regard $1,594,995.23 as the amount for which provision should be made in working capital for the gas business?

Mr. Chambers: I make the same objection to that.

Mr. O'Brien: And it is leading.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

The Master: Was that less than the total amount of the receivables on that date? 25173

The Witness: It was.

The Master: How much less?

Mr. Ransom: A little over a million dollars.

The Witness: More than a million dollars less than the actual accounts receivable?

By the Master:

Q. How did you pick out this particular amount, how did you fix this particular amount as the amount which should be reserved for working capital?

A. That is the basis of my conclusion of the total amount of those three items that should be provided,

my opinion as to the total of the three, is based as to that particular item upon that particular amount, and that comprises accounts receivable applicable to the company's operation as a gas company as distinct from any other accounts receivable.

Q. How much cash?

A. $1,500,000.

Q. Making the total?

A. $4,625,000, as the amount that in my judgment should be provided to meet the company's requirements of this character.

25174 By Mr. Ransom:

Q. The item of $1,500,000 for cash, is that more or less than the cash on hand in fact as of December 31, 1918?

A. It is slightly more than the balance of cash in the banks of the company, the banks in which the company deposits its funds as of that particular date, that being somewhere between $1,200,000 and $1,300,000. That amount, of course, varies. It might run to one million dollars and it might run to two million dollars. In fact, there are times when our cash balance amounts to several million dollars. I believe that $1,500,000 is the smallest amount of
25176 cash which on the average this company should carry to meet its requirements and its obligations.

Q. Is this statement which I show you a statement of the detail of the accounts receivable applicable to the gas business which are included in this $1,594,995.23?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial. The paper has not been shown to the defendants, and is an attempt to condense a whole lot of unproved data in a question to the witness calling for opinion testimony.

The Master: Objection overruled.

Mr. O'Brien: Exception.

A. Yes.

Q. Are these the items out of the total accounts receivable of various kinds which you regard as those for which provision should be made in working capital?

Mr. O'Brien: I make the same objection.

The Master: Same ruling.

Mr. O'Brien: Exception.

A. Yes.

Mr. Ransom: I offer in evidence this sheet to 25178
show the itemization of the larger items to which the witness has testified, in order that the defendants may pick out of the book items those which are here claimed.

The Master: I suppose this is objected to, is it?

Mr. Chambers: I object to it on the ground it is incompetent, irrelevant and immaterial, not the best evidence, hearsay, and no basis laid for the introduction of this paper.

The Master: Objection overruled.

Mr. Chambers: Exception.

Mr. O'Brien: I object to it on the ground that 25179
these items have not been proven: that they embrace matters that are extraneous to the gas making business: that there is no proof here as to the manner in which he has segregated the cash of the company that belongs to or pertains to the gas making business, and the amount of the cash that pertains to or belongs to or is assignable to other branches of the complainant's business. That there is no proof here as to how much of the company's cash is being used in investments;

there is no proof here that part of this cash on hand is not necessary for dividends, was held in trust to be paid some time in the future. The company should not charge the public for interest on its earnings which are awaiting distribution to stock and bondholders. It involves so many matters that must be taken up in detail that I object to the form of the questions and the make-up of this clearly shows that they are attempting here to put into the record through expert opinion a great many matters that do not belong here. For
25181 instance, the various items in the suspense account have not been proven. A great part of these items seem to have to do with what we contend is extraneous to the business, the appliance business of the company. There is no proof as to where these various amounts were assembled. I call your attention to one amount, contractors and individuals for labor and material furnished, $46,411. Now, that cannot be put in without some foundation being laid. Data of that kind cannot be put in evidence in the form of an exhibit of this kind. So, too, there is an objectionable item here which must be en-
25182 tirely explained by legal evidence, Lexington Avenue Subway (expense incurred by company and not yet reimbursed), amounting to $279,758.54. If that is a just claim they don't need the cash for it. If they have a just claim they can discount that in their banks.

The Master: Which bank?

Mr. O'Brien: Any bank.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Paper received in evidence and marked Complainant's Exhibit 401.

Q. Then this item of $4,625,000 is the amount of working capital for the gas business?

A. Required for the company's gas business.

Mr. Chambers: I object.

Mr. O'Brien: I object to that in form and in substance, your Honor.

The Master: Objection overruled.

Mr. O'Brien: Exception.

The Master: I am taking the witness's opinion as to what he thinks is the amount of working capital.

Q. And that is all the company claims as working 25184
capital in this case?

A. That is all it claims.

Mr. O'Brien: I object to that irony.

Mr. Chambers: That is not the figure you gave.

Q. There was furnished to the defendants some days ago a statement of the complete working capital as per the books; is that correct—as of that time?

Mr. O'Brien: Why was that furnished to us, Judge?

Mr. Ransom: I thought you wanted it.

Mr. Chambers: It is different from the one you proved this morning, though. 25185

Mr. Ransom: It is in the books. We have eliminated certain items.

Mr. Chambers: I just want to point out to you, you gave us one statement and you prove another.

Mr. Ransom: Yes.

Mr. O'Brien: I hand your Honor a copy of the communication and the exhibits (handing to Master).

Mr. Ransom: I offered it in evidence.

The Master: Yes.

Mr. O'Brien: This paper I refer to in handing this to the Court is the company's letter received dated December 5th but delivered on December 9th.

Mr. Ransom: December 9th?

Mr. O'Brien: December 8th. That is the way that Whitman, Ransom & Ottinger have of doing business for this complainant. A little day does not make any difference, $19,000 a few minutes ago was an inadvertence—that is the spirit.

Mr. Ransom: It was delivered to the office of
25187 the Corporation Counsel on the 5th of December.

Mr. O'Brien: I will have to controvert that, Judge.

Mr. Ransom: I will prove it if it is material.

Mr. O'Brien: I do not suppose you want to make a misstatement?

Mr. Ransom: I know it was.

Q. Have you made up, Mr. Carter, a computation of what you regard as the requisite amounts of working capital for the gas business for the years 1905 to 1918, both inclusive?

A. I have.

25188 Q. On the basis of what you have already testified?

A. I have.

Q. And is this such statement (handing to witness)?

A. Yes, that is it.

Q. And in your judgment these are reasonable sums and necessary sums for the respective years?

Mr. Chambers: To that I object as incompetent, irrelevant and immaterial.

Mr. O'Brien: Same objection.

The Master: I will overrule the objections.

A. They are.

Mr. O'Brien: Exception. Has this been changed, too, Judge?

Mr. Ransom: It is changed because we are only proving the lower items today.

Mr. O'Brien: You have a maximum and a minimum in this case?

Mr. Ransom: We have a working capital employed in the gas business and a working capital which includes certain items which we have eliminated. I offer this in evidence.

Mr. Chambers: Do you offer this?

Mr. Ransom: I do. 25190

The Master: The objections have been made and I have overruled them, have I not?

Mr. Chambers: I object. I do not think we have made them since he offered it.

The Master: Yes.

Mr. Chambers: The last objection I made is considered as having been made to this, or rather the objections I made to exhibit—

The Master: Exhibit 401.

Mr. Chambers: Right. Exception.

Mr. O'Brien: Same objection and exception.

Marked Complainant's Exhibit No. 402.

Q. Mr. Carter, in connection with your duties is it 25191
a part of your work to keep continuously in touch and continuously informed as to the costs and expenses of doing the various branches and departments of work for the complainant company in connection with its gas business?

A. Yes, for a period of at least thirty years I have done a great deal of cost computing and analyzing and comparing, both in respect of manufacturing and distribution of gas.

Q. That is one of the functions of yourself and your department?

A. That is one of the important functions of my department.

Q. And you are continuously making those cost analyses for the executive committee and the Board of Trustees?

A. They are constantly being made, yes.

Q. Mr. Carter, in addition to the items of cost per thousand cubic feet of gas to which Mr. Woods testified as the cost of making gas, the cost for distribution, superintendence and supplies, meter and installation work, work on consumers' premises, repairs and
25193 renewals and replacements, will you please state what, if any, were the other costs per thousand cubic feet of gas sold by the complainant company during the calendar year 1918 and during the twelve months ending October 31, 1919, including the time as to which Mr. Woods testified? And explain how such additional costs were calculated by you?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial, the witness is not qualified to state, secondary evidence, the books are the best evidence.

Mr. Ransom: Do you mean that objection seriously?

25194 Mr. Chambers: Yes.

Mr. O'Brien: The books are no evidence. I object to it as incompetent, irrelevant and immaterial.

The Master: I will let Mr. Carter state whether or not there were items in addition to the items given by Mr. Woods. I will let him answer that question first.

Mr. O'Brien: Well now, your Honor, I would like to be heard on this. It is a very important matter.

The Master: I have overruled your objection to that and give you an exception. I do not want to hear the argument.

Mr. O'Brien: I want to address certain reasons to the Court before you make your ruling.

The Master: I will have an answer to this one question over your objection and exception. were there items other than those testified to by Mr. Woods?

The Witness: There were.

Q. What were they?

The Master: I do not want the items of cost, 25196
I do not want the figures or the money. I am going to allow you to state over the objection of Mr. Chambers and Mr. O'Brien on the grounds already given, as incompetent, irrelevant and immaterial, and all that that covers—

Mr. Chambers: Well, all the grounds that were stated when the books were offered in evidence.

The Master: Yes.

Mr. Chambers: That they are not properly proven and so forth.

The Master: Yes, the objection is overruled and exception allowed. I will let you state what items you say there are of cost in addition to those 25197
already given by Mr. Woods.

Mr. O'Brien: Apparently they are discrediting their own witness.

The Master: I want to find out what Mr. Carter says.

Mr. O'Brien: Exception.

The Master: Not in money, but what classifications of items?

Mr. Chambers: When I said the books were the best evidence, a minute ago, I meant the records and data, I see there was some point made of that.

The Witness: One item, "Commercial Expense," in the statement of expenses for the twelve months ended December 31, 1918, appears as one item, I am not naming the amount, it appears as one item, "Commercial Expense." I refer to Exhibit 364 on that.

The Master: Prepared by Mr. Teele?

The Witness: Yes.

The Master: Well, that item appears in Mr. Teele's statement.

The Witness: It appears in Mr. Teele's state-
25199 ment, your Honor, as a single item, "Commercial Expense." It also appears in the statement for the twelve months ended October 31, 1919. None of those two figures are indicative of the cost today of commercial expense.

The Master: You are getting away from my question.

Mr. O'Brien: Will you wait a minute, just to hear me a minute, your Honor?

The Master: No.

Mr. O'Brien: I want to address the Court.

The Master: I don't want you to.

Mr. O'Brien: That means I cannot, does it?

25200 The Master: Yes, it means you cannot.

Mr. O'Brien: Then I except to your Honor's ruling and protest against it.

The Master: All right. All I wanted you to tell me, Mr. Carter, was the items that were in addition to those testified to by Mr. Woods Now, the item that you have given me appears in the tabulation submitted by Mr. Teele.

The Witness: They are, yes, sir. That item appears in the tabulation submitted by Mr. Teele, 364, I think was the number.

The Master: Yes. Now, that commercial expense—

25201

Mr. Ransom: That is one of them.

The Master: That commercial expense item is the item about which you are now testifying?

The Witness: That is one of the items about which I am now testifying.

The Master: Give me another item.

The Witness: The other item was grouped by Mr. Woods in his statement as "General—Miscellaneous Expense."

The Master: Where does that appear in Mr. Teele's statement?

25202

The Witness: That appears and embraces all of the items on Mr. Teele's statement following the item of commercial expense, all of the items following the item of commercial expense.

The Master: What else?

The Witness: Shall I name those all, or—

The Master: No. What other classification do you say should be added to Mr. Woods' statement?

Mr. Ransom: He might just indicate what they are and have them all on the record.

Mr. O'Brien: Your Honor, this is getting on the record over our objection.

25203

The Master: I know it is.

Mr. O'Brien: Over what you had intended when you made your ruling, this porous plaster to support poor Woods' testimony.

The Master: I see on Exhibit 364, which is the Teele statement of operating expenses of the 12 months ending December 31, 1918, the item "Commercial Expenses $1,012,592.48." That is the commercial expense item that you have been telling me about, is it not?

The Witness: That is the one I refer to, yes, sir.

The Master: Do I understand Mr. Woods did not include that in his expense of making and distributing gas?

The Witness: He did, but he was not permitted to testify to it. It was on his sheet.

The Master: And you say that that is a necessary expense?

The Witness: Absolutely.

The Master: That is your testimony now?

The Witness: Absolutely; and that that is not an indication of the present cost of it.

25205 The Master: I did not ask you for that.

Mr. O'Brien: I move to strike it out.

The Master: I will strike it out.

Mr. Ransom: Exception.

The Master: That was the expense in 1918?

The Witness: That was the expense in 1918.

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

Mr. Chambers: Objected to.

Mr. O'Brien: The basis has not been laid for it by adequate or proper proof.

Mr. Chambers: We add to that the ground the witness is not qualified.

25206 The Master: Now, following that item on Exhibit 364 of commercial expense—

Mr. Chambers: Exception.

The Master (continuing): Are "Salaries General Office, Supplies and Expenses G. O., Legal Expenses," and other items running all the way down to and including miscellaneous general expense?

The Witness: Exactly.

The Master: Now, those are items in addition to those that Mr. Woods testified to?

The Witness: Exactly.

The Master: And that you say are proper items of expense?

The Witness: Exactly.

The Master: And were necessarily all actually expended by the gas company in 1918, and those items were necessarily expended?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Witness: Absolutely.

Mr. O'Brien: Exception. You are asking the witness about a hypothetical statement now.

The Master: The objections are overruled. 25208

Mr. Chambers: Exception.

The Master: Now, I am going to ask you one more question, which will call for an objection.

Mr. Ransom: There is one more item.

The Master: What is it?

The Witness: The other item is the item of taxes.

The Master: Yes.

The Witness: And in that regard I would draw to your Honor's attention that the items shown in the exhibit which you have in your hand as taxes does not include all of the taxes that are included in the expenses shown by that sheet. 25209 In other words, there is included in the amount paid by the Consolidated to the Astoria Company all of the taxes paid by the Astoria Company on its property, all taxes. There is included in the amount paid to the Mutual Company the taxes on so much of its plant as is devoted to the service of the consumers of the Consolidated Gas Company. There is included also in the amount paid the Astoria Company taxes on the jointly used facilities, a part of the carrying cost of which is borne by the Astoria

Company and charged to the Consolidated Company. There is also included, and not shown as taxes, an amount paid to the Standard Company for the use of its valve house representing three-thirteenths of the investment in that property, the taxes on that. In other words, your Honor the item of taxes there—

The Master: On Exhibit 364?

The Witness: Does not represent the taxes on the property necessarily devoted to the consumers of the Consolidated Gas Company and neces-
25211 sarily used.

The Master: Putting it another way, in addition to the tax items shown on the Teele Exhibit 364, which it is claimed was the actual taxes necessarily chargeable to the Consolidated Gas Company in order to arrive at the taxes to be charged per thousand cubic feet, there should be added the necessary taxes paid upon necessary property used for the additional requirements not met by the gas company?

The Witness: Precisely.

Mr. O'Brien: I am objecting to this, your Honor, and your taking over this examination of
25212 the witness.

The Master: I know you are and I am taking it over in order to get through with it quickly.

Mr. O'Brien: I insist that it is improper for the Master to conduct the cross-examination or the direct-examination of these witnesses.

The Master: All right, you insist on it. Now, I understand you were anxious to say, Mr. Carter, that the commercial expense item has increased in 1919 over what it was in 1918?

Mr. O'Brien: Same objection, your Honor.

The Master: Same ruling.

The Witness: It has increased, your Honor.

The Master: By reason of increase in salaries to employees?

The Witness: Exactly.

The Master: You have got to pay them more?

The Witness: Exactly.

The Master: Now, how about the other items following commercial expenses, are they any more you say, this year than last year?

The Witness: I have studied carefully, and they are more.

The Master: For the same reason? 25214

The Witness: For the same reason, and also in respect of some material.

The Master: You have answered it, now I object to anything further.

The Master: Same ruling. Now, with reference to taxes, I will ask you the same question over the same objection and the same ruling on taxes, are taxes any higher in 1919 than 1918?

The Witness: I do not think they are, your Honor. I think they are about the same.

Q. What are the additional taxes which you say should be added to the tax figures shown under the head of "Cost of Distribution"? 25215

The Master: He stated.

Q. The amount?

A. You want the amount?

Q. Yes.

Mr. O'Brien: I object to it.

Mr. Chambers: I object.

The Master: I won't take it, entirely too speculative.

The Witness: It is a matter of fact, your Honor.

The Master: No, I have got to go into the values of the properties and the amounts of taxes, and I have got to go into all these other plants and figures.

The Witness: It is a matter of testimony, it is in the evidence.

The Master: I won't take it.

Mr. Ransom: Exception. I offer to show the amount of taxes which are paid by the Consolidated through paying taxes assessed against the Astoria Company that are paid in the first in-
25217 stance by the Astoria Company and then billed as such as a part of the cost to Consolidated Gas Company and paid by the Consolidated Gas Company.

The Master: Didn't I always understand that the charge of the Astoria was cost plus 7 per cent on the invested capital?

Mr. Ransom: It is cost plus taxes, plus insurance, plus seven per cent on the invested capital, so that the amount of taxes which the Astoria Company pays is billed to the Consolidated Company, and this officer, the comptroller of the Astoria Company and the man who checks, or
25218 under whose direction is checked the bills of the Astoria Company to the Consolidated Company knows how much taxes are paid, and how much are billed by the Astoria Company to the Consolidated Company for taxes over and above station cost.

Mr. O'Brien: I move to strike out the testimony of the witness Ransom on the ground he has not been sworn.

The Master: I will allow the witness to state what the item of taxes was charged by the Astoria Company during 1918.

Mr. O'Brien: May I ask a couple of preliminary questions, your Honor?

The Master: No, I won't allow it.

Mr. O'Brien: Exception.

Mr. Chambers: I object as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Chambers: Witness not qualified.

The Master: Objection overruled, exception.

Mr. Chambers: And furthermore, the books, none of the underlying data, books or records of the Astoria Company have been produced or 25220
shown to be accurate and correct, or offered in evidence.

The Master: I am just asking this witness—I am allowing this witness to testify what the Consolidated Gas Company paid the Astoria Company, the tax item charged against it.

Mr. O'Brien: Well, it was stated, your Honor, that that was included in the cost for gas.

Mr. Chambers: Exception.

The Master: Mr. Carter, will please answer.

The Witness: $590,107.35.

The Master: Next question.

Q. What is that per thousand cubic feet of gas? 25221

A. I can make a computation in a moment.

The Master: I don't want it. We have got the thousand cubic feet of gas made and the thousand cubic feet of gas sold, and I will just take that item.

Q. With respect to the item of the commercial expense?

A. Do you want the rest of the taxes? You only covered one single item.

The Master: The other charges.

Q. Well, what are the other taxes?

The Master: One minute, now.

Mr. O'Brien: He is getting this all in.

The Master: Now, the other companies as I understood it charged cost plus 10 per cent, or whatever it was. Isn't that so, Mr. Carter?

The Witness: The Consolidated pays the Mutual Company also taxes.

The Master: Is this a special item also?

The Witness: No, but included in the amount here, representing the carrying cost of 10,000,000 cubic feet of capacity.

25223 The Master: I won't take it.

Mr. Ransom: Exception.

The Master: Next question. I won't take the tax items which were included in a bulk, charge over and above cost.

Mr. Ransom: Won't your Honor permit him to state the total amount of taxes in terms of cents per thousand cubic feet?

The Master: No.

Mr. Ransom: Exception. I offer to show that.

Q. With respect to the item of commercial expenses which you say has now increased, what in your judgment, as the executive officer in charge of the com-
25224 mercial department, is now the commercial expense per thousand cubic feet of gas, at what rate?

Mr. O'Brien: Your Honor, that blanket question cannot be proper in this case.

The Master: I will allow it. Objection overruled.

Mr. Chambers: I object to it as incompetent, irrelevant and immaterial.

The Master: What do you figure it to be this year?

The Witness: Six and one-half cents at the present time.

The Master: As compared with what last year, .0562?

The Witness: .0562, yes, sir.

Mr. O'Brien: I move to strike out that answer, your Honor, it is entirely without foundation.

The Master: Motion denied.

Mr. O'Brien: It is opinion testimony.

The Master: Yes, I am taking it, he has followed the cost from month to month, and he says that is what it shows this year.

Mr. O'Brien: He has not told you yet what commercial expense means, he has not placed the 25226
limits on commercial expense.

The Master: Next question.

Q. Similarly as to the item of general and miscellaneous expense, which you say has increased in cost, what do you say is the present expenditure, the cost, covering these items, in terms of cents per thousand cubic feet of gas?

Mr. O'Brien: I object on the ground the—

The Master: Same objection, same ruling and exception.

Mr. O'Brien: Your Honor will not permit me to state my objection on the record?

The Master: Is there anything more than you 25227
have been saying for the past hour?

Mr. O'Brien: I want to particularize it.

The Master: I don't want you to.

Mr. O'Brien: Exception.

The Witness: 7.7 cents.

The Master: That includes what?

The Witness: That includes, in additions to the items shown on the Consolidated statement as such, the expenditures of the Astoria Company amounting to .0072 cents, your Honor.

The Master: I don't want that.

The Witness: Well, my answer then was perhaps correct.

Mr. O'Brien: I move to strike out all the witness's testimony, all the testimony of the witness since he was first quizzed as to these corrections which should be made to either the Teele exhibit or to the Woods exhibit, the Woods hypothetical figures.

The Master: Motion denied.

Mr. O'Brien: Exception.

The Witness: The Woods' statement, your
25229 Honor, disregarded any of the expenses of the Astoria Company which the Consolidated Company pays and which are included in the expenses of the company for the year ended December 31, 1918. There was actually included in that statement the expenses of a general and miscellaneous character not properly a part of the holder cost of gas, but having to do with the administration of the business, insurance and expenses of that character, amounting to .0072 cents per thousand cubic feet. It seemed to me that in order to show the cost of gas, disregarding any actual cost of any particular company during any par-
25230 ticular period, but the cost based upon actual and existing conditions, that that item of Astoria, cost which would be incorporated in the Consolidated cost if the two companies were consolidated, should not be omitted. That is the reason I thought that—

The Master (interrupting): Now, on this commercial expense item, that you give me of 6.5 cents, did you include any of that?

The Witness: No, sir.

The Master: Take the items appearing on Exhibit 364 following commercial expense, and lim-

iting your testimony entirely to that, you say that the items are more this year than last year?

The Witness: Yes, sir. May I state that the cost of those items grouped during the year ended December 31, 1918, was 6.36 cents?

Mr. O'Brien: I move to strike out that statement. Your Honor asks him if it costs more, and he proceeds to give the specific figures, the foundation for which has not been laid. It is impossible to tell whether he is giving opinion testimony now, or testimony as to concrete facts.

The Master: Motion denied. 25232

Mr. O'Brien: Exception.

The Master: Mr. Carter, do I understand your testimony to be that in the Teele exhibit the items beginning "Salaries, General Office," went down to and including "Miscellaneous and General Expense," according to the figure there—

The Witness: For the calendar year they were 6.36 cents.

The Master: For 1918?

The Witness: For 1918.

The Master: I am talking now about these odd figures down here all added together.

Mr. O'Brien: I object to it as incompetent, ir- 25233
relevant and immaterial, and I protest against the Master conducting this examination. I protest against the questions because they are so blanket and so vague and general that nobody reading this record afterwards will be able to know what the questions meant.

The Master: What do you say these same figures are for 1919?

The Witness: 7 cents.

The Master: The cost of these items specified on Exhibit 364 from commercial expense down,

has gone up from 6.36 in 1918 to 7 cents in 1919?

The Witness: Yes, sir.

Mr. O'Brien: I object, and I want to have the stenographer directed to take that portion of what your Honor said where you said that he was to pay no attention—

The Master: If you want to note your objection to the last statement, do so. If not, I will repeat on the record what I said before, that when the witness is answering my question, or has
25235 started to do it, and you are starting to object, the stenographer is to disregard your objection until the answer is finished. If you want to note your objection, do so. If you don't take your seat.

Mr. O'Brien: I want to note my objection, and I want to ask your Honor to direct the witness Carter to withhold his answer after you put a question until I have a chance to enter my objection in my own way on the record.

The Master: Next question. Counsel apparently does not want to enter his objection.

Mr. O'Brien: I have objected to it, and I have
25236 taken an exception to every one of your rulings.

The Master: All right. Next question.

Q. Mr. Carter, have you made up from the appraisals of property made by Mayer, Simpson and Price and read in evidence in this case, the schedules of additions and retirements to property, which have been received in evidence in this case, the item of working capital that is testified by you, and the franchise value of the company at $7,781,000, a statement or summary setting forth the amount of property in use by the Consolidated Gas Company in its gas business in each year since 1907, the net earnings from the gas

business in each of those years as shown by Exhibit 366, in evidence, and the earnings from the amount of property so shown if computed at the rate of seven per cent?

The Master: All of that is record testimony, is it?

Mr. Ransom: All record testimony.

The Master: And all you are asking the witness to do is to say whether he prepared a tabulation of that?

Mr. Ransom: Yes.

25238

The Master: You are offering that?

Mr. Ransom: I am now offering it.

The Master: If any counsel objects I will not take it as an exhibit, but I will take it for the convenience of the Court.

Mr. Ransom: It is made up for the convenience of the Court as well as for the convenience of the defendants.

Mr. Chambers: I do object to it.

The Master: You can give me a copy of it for my information, and I will check it with the record myself.

25239

Mr. Ransom: May I mark it for identification?

The Master: Yes.

Paper marked Complainant's Exhibit 403, for identification.

The Master: I am taking it in the form of a brief summarizing the testimony.

Mr. Ransom: It is only for convenience.

Mr. Chambers: I think since he has furnished it to the Master it should be furnished to us also.

The Master: No, not unless it is an exhibit.

Mr. Chambers: Exception.

The Master: Not unless counsel wants to give it to you.

Mr. Ransom: The defendants may cross-examine.

Mr. Chambers: Is this your last witness?

Mr. Ransom: As far as I know at this time.

Mr. Chambers: Then when the cross-examination is over you are through?

Mr. Ransom: I think so. There may be some re-direct, but I expect that will be mostly done by counsel for the defendants.

25241 Mr. Chambers: We would like to take up now the question of how much time the defendants will be allowed from the time when Judge Ransom closes his case, and when we begin, after we make our motion to dismiss the complaint. We would like a month's interval between—

The Master: I will not interrupt Mr. Carter's examination to dispose of that now. Proceed with the cross-examination.

Mr. Chambers: You will take it up after we are through with the cross-examination?

The Master: Yes.

Mr. Chambers: The reason I brought it up at

25242 this time is that we would like, under the circumstances to make perhaps an application to Judge Mayer.

The Master: You will have to finish this cross-examination now. I can indicate to you now that my judgment is that you are to proceed with your defense when the complainant is through.

Mr. Chambers: You will give us an opportunity, though, to take this up, so we can make a formal application after we are through with the cross-examination?

The Master: You can make your application any time you please. I say to you now that I see no reason at this time why there should be an adjournment of the case to permit the defendants to prepare their defense, and that I shall direct the defendants to proceed with putting in their proof when the complainant's proof is finished.

Mr. Chambers: But you will hear us, will you, after we complete this cross-examination?

The Master: If you think there is anything that will lead me to adjourn I will hear you when 25344
the cross-examination is through.

Mr. Chambers: Will you give us an opportunity to take it up with Judge Mayer?

The Master: If you want to make an application to Judge Mayer you can make it on the statement I have already made, that I see no reason for an adjournment.

Mr. O'Brien: When that matter was brought up before—

The Master: I will take it up when you get through with this cross-examination.

CROSS-EXAMINATION BY MR. CHAMBERS: 25245

Q. Mr. Carter, you testified upon the hearing conducted by the Senate Committee which was known as the Stevens Investigating Committee? You remember you testified in that?

A. I was a witness in that case.

Q. And you testified upon the last trial, you testified on the trial of the Consolidated Gas Company v. Willcox, or rather Consolidated Gas Company vs. Mayor?

A. Yes.

Q. In 1905 or 1906, whenever that trial was had?

A. In 1906.

Q. Now, the Consolidated Gas Company is paying, is it, seven per cent on its stock which is listed on the stock exchange?

Mr. Ransom: I object to that.

The Master: I will allow it.

Mr. Ransom: Exception.

A. The last dividend paid was at the rate of 7 per cent. We have paid 7 per cent during the year 1919, that is, the next dividend payable December 15th has been declared and is payable at the rate of 7 per cent per annum.

25247 Q. How long back have you been paying 7 per cent on the capital stock of the Consolidated Gas Company?

A. I am not sure that I have that information, but I should say for a period of several years the company has paid 7 per cent for four or five years.

Q. Haven't you a list showing the annual dividend payments since your existence?

A. Since our existence—no, I don't think I have such a list.

Mr. Ransom: I think I have it, Defendants' Exhibit AA34 for identification.

A. I find I have a dividend list. It has been seven

25248 per cent since 1916.

Q. And before that?

A. Well, it was 6 3/4 per cent, and then it was 6 per cent.

Q. How long was it 6 3/4 per cent?

A. It was 6 3/4 per cent for one year, 1915.

Q. And then back of that?

A. For four years it was at the rate of 6 per cent, from 1911 to 1914, inclusive.

Q. And before that?

A. 4 1/2 per cent in 1910.

Q. And before that?
A. 4 per cent in 1907, 1908 and 1909.
Q. And before that it was 4 per cent right along?
A. It was 5 per cent in 1906.
Q. What was it in 1905?
A. 8 1/2 per cent.
Q. What was it in 1904?
A. 8 1/2 per cent.
Q. What was it in 1903?
A. 8 per cent.
Q. What was it in 1902?
A. 8 per cent.
25250
Q. What was it in 1901?
A. 8 per cent.
Q. What was it in 1900?
A. 6 per cent.
Q. What was it in 1899?
A. 5 1/2 per cent.
Q. What was it in 1898?
A. 8 per cent from 1894 to 1898, inclusive.
Q. What was it in 1893?
A. 7 1/2 per cent.
Q. What was it in 1892?
A. 6 per cent.
Q. What was it in 1891?
25251
A. 5 per cent from 1889 to 1891, inclusive.
Q. What was it in 1888?
A. 4 per cent.
Q. What was it in 1887?
A. 4 per cent.
Q. What was it in 1886?
A. 3 per cent.
Q. What was it in 1885?
A. 7 per cent.
Q. You stated you had charge of the company's books. Have you found or located the books of the

25252 

companies whose property was taken over by the Consolidated Gas Company when the consolidation took place?

A. No.

Q. You have not been able to find those?

A. No.

Q. Are they in existence as far as you know?

A. I don't know.

Q. Do you remember Mr. Yalden?

A. Yes, Mr. Yalden was an expert accountant employed by the minority of the Senate Committee in
25253 1886.

Q. Do you recall when he made his examination of the books and records of these companies who were absorbed by the consolidation?

A. I think it was in the year 1885, the winter of 1885-86.

Q. You were there present?

A. Yes, I was with the company at that time.

Q. He worked on the company's books, these old books that you cannot find?

A. He worked on the books of the companies, I believe; in fact, I know he did it, for he got certain information.

25254 Q. You have seen his report and know about it?

A. I was familiar at the time with his report.

Q. Did he furnish the company with a copy of it?

A. Why, his report was published, and I believe formed a part of the Senate document at that time.

Q. It is in the archives of the Senate, then, the original report?

A. The printed Senate report.

Q. Have you Yalden's original report?

A. No, he made no report for the company, nor did he make any examination for the company. He was working for the minority of the Senate Committee.

25255

Q. Did you furnish him information at the time he was working?

A. Personally?

Q. Yes.

A. No.

Q. But he was there working on the company's books?

A. The Consolidated Company's books?

Q. The old companies?

A. Yes, he was working there.

Q. Do you know whether he is dead or not.

25256

A. I don't know.

Q. That was in 1884 or 1885?

A. I think it was in 1885.

Q. Do you remember how old a man he was then?

A. I do not.

Q. Now, you are secretary of the Consolidated Gas Company?

A. I am now secretary.

Q. And are you an officer of any of the other allied companies?

A. Yes.

Q. Will you please state which ones and what offices you hold in those companies, naming the companies?

25257

A. I am comptroller of the Astoria Company.

Q. How long have you been comptroller of the Astoria Company?

A. Oh, for a number of years, several years.

Q. Since 1905?

A. I think so.

Q. That is practically from its beginning?

A. It began to operate in 1906.

Q. Do you receive a salary from the Astoria Company?

A. Yes.

Q. How much?

Mr. Ransom: I object to that as immaterial.

The Master: I will allow it.

Mr. Ransom: They have had access to the books of the Astoria Company.

The Master: Then they know.

Mr. Ransom: Yes, and therefore the effort to drag it out of the witness on cross-examination for the purpose of some fancied humiliation in showing how small this companies salaries are.

The Master: Nonsense. How much is the salary?

25259 Mr. O'Brien: Exception.

The Witness: $2,500.

Q. And has been for a long time?

A. A long time.

Q. Now, what other companies are you an officer of?

A. I am secretary and assistant treasurer of the Westchester Lighting Company.

Q. How long have you been secretary and assistant treasurer of the Westchester Lighting Company?

A. Oh, a dozen years, I guess.

Q. Do you receive a salary from that company?

A. No.

25260 Q. No salary?

A. No.

Q. What other companies?

A. I am treasurer of the New York & Queens Gas Company.

Q. Do you receive any salary from that company?

A. I do not.

Q. How long have you been treasurer of that company?

A. Several years.

Q. Any other companies?

A. I have been treasurer of the Peekskill Lighting & Railroad Company.

Q. Do you receive any salary from that company?

A. I do not.

Q. What other company?

A. I am treasurer of the Northern Westchester Lighting Company.

Q. Do you receive any salary from that company?

A. Nothing.

Q. Any other companies that you are an officer of? How about the Standard?

A. I am not an officer of the Standard.

Q. The New York Mutual?

25262

A. No.

Q. The New Amsterdam?

A. I think I have covered them all. I am president of the Ball Electric Illuminating Company.

Q. Do you get any salary from that company?

A. Nothing.

Q. You are not an officer, then, of the Central Union or the Northern Union?

A. No.

Q. Nor on their Board of Directors?

A. I am on the Board of Directors of both companies.

Q. Of both of those two companies?

26263

A. Yes.

Q. Are you on the Board of Directors of the Standard?

A. No.

Q. Are you on the Board of Directors of the New Amsterdam?

A. No.

Q. Are you on the Board of Directors of the Mutual?

A. No.

Q. Are you on the Board of Directors of the Astoria Company?

A. I am not.

25264 Robert A. Carter, Cross.

Q. Any other companies? The Edison Company?
A. No.
Q. Are you an officer of the Edison Company?
A. I am not.
Q. The New York Edison Company?
A. No.
Q. You are not on the Board of Directors?
A. No.
Q. Are you on the Board of Directors of any other Brooklyn gas companies?

Mr. Ransom: Any other Brooklyn companies?

25265 Mr. Chambers: Any other Brooklyn gas companies?

A. No.
Q. The New York & Queens Company—is that a Brooklyn company?

Mr. Ransom: No.

Mr. Chambers: It is a Brooklyn company, is it? It is in the Borough of Queens?

A. It is not a Brooklyn company.
Q. What other corporations are you an officer of that you have not covered?

Mr. Ransom: Objected to as immaterial and not within any possible scope of the examination of this witness. He may be an officer outside of the lighting or gas field.

25266

The Master: I will allow it. I am disposed to allow any question of Mr. Carter that may by any possibility have any bearing on this case, so long as it is not gone over more than once.

A. Do you want the companies I am a director of?
Q. Yes, go right through them?
A. I am a director of the Brush Electric Illuminating Company. I will only give you those in addition to the ones you have already named.
Q. Yes, right; do not go over the other ones.

A. I am a director of the Municipal Lighting Company; I am a director of the United Electric Light & Power Company. I guess that is all.

Q. You devote some of your time to the affairs of the Astoria Company?

A. Oh, yes.

Q. Do you keep any track of how much time you devote to the affairs of that company?

A. No.

Q. Does anybody?

A. No.

Q. You devote some of your time to the Westchester 25268
Lighting Company, do you not?

A. Yes.

Q. Do you keep any track of the time you devote?

A. No.

Q. Does anybody?

A. No.

By the Master:

Q. Do you keep any track of the time you spend for any of the other companies?

A. No, sir.

Q. Does anybody?

A. No, sir. 25269

By Mr. Chambers:

Q. You devote a considerable portion of your time, you said, to the investments of the Consolidated Gas Company?

Mr. Ransom: He did not say that.

A. No, I have not made any such statement.

Q. Yes, you said you had charge of the loans. Yes, you did; you said you had charge of the loans of the Consolidated Gas Company.

A. No, I did not.

Q. Do you have charge of the loans?

A. What do you mean, charge of the loans?

Q. Why, the loaning out of any money they have to any of these other companies. Or any loans. They make loans to the allied companies from time to time, do they not?

A. The Consolidated has made loans.

Q. In large sums?

A. That is a transaction that takes a few moments, and then the matter of the recording of it is done by others.

Q. I did not ask you how long it took. Do you have charge of it?

25271 A. Why, I am usually consulted about those matters.

Q. Are there any loans made without your knowledge and consent?

A. Yes, I think there would be.

Q. Not very many?

A. The treasurer would advance money to one of the allied companies without conferring with me, if it was not a substantial sum.

Q. But you do devote some time to that?

A. Not measurable. You could not express it in decimal fractions of a day's time.

Q. You do not know how much you devote to that?

25272 A. I do. I know it is negligible.

Q. You devote some time to the taking care of the stock, the stock books of the company?

A. Do you mean the records of the Consolidated Gas Company's stockholders? Personally?

Q. Yes, your department.

A. My department does, yes, sir.

Q. You do some, do you not?

A. No.

Q. Who takes care of the stock of these other companies, where the Consolidated owns all the stock, say, of the Astoria Company and the New York Edison?

A. Do you mean physical care of the share and certificates of stock?

Q. No, I mean who devotes his time to the care of and looking after those stocks?

A. There is nobody looking after it. They do not require any looking after, they are locked up in a vault and are audited once a month by the Board of Trustees, appointed for that purpose; namely, the Finance Committee.

Q. Who goes and attends the meetings of the stockholders of these companies? Take the New York Edison; are you the one who attends the meetings and 25274
votes on the stock owned by the Consolidated?

A. No.

Q. Who is it in your company who attends these various meetings of the Edison, the Astoria, the Standard, the Mutual and New Amsterdam and Westchester Lighting, and the Tarrytown and the Yonkers—who is it does that?

A. Why, I do not think of the last company you have named anybody from the Consolidated attends their meetings at all. The meetings are held up in Westchester County, and are attended by the officers of the company. They have their stockholders meetings and they are conducted in the usual manner, and who- 25275
ever is appointed the proxy of the stockholders to vote the stock attends the meeting and votes it.

Q. Who attends the meeting for the Consolidated of the Astoria Company?

A. Who are the proxies for the stockholders of that company?

Q. No, I mean, who of the Consolidated attends the meeting of the Astoria Company, representing the stock owned and held by the Consolidated in that company?

A. I think Mr. Gawtry does that.

Q. And who attends the Edison?

A. I think Mr. Gawtry attends that.

Q. And the Standard?

A. Mr. Gawtry attends that.

Q. Attends those meetings of the stockholders?

A. Yes, he attends all the meetings.

Q. You do not do that?

A. I do not do it.

Q. And the New Amsterdam, Mr. Gawtry, too?

A. Yes.

Q. So that he devotes a considerable portion of his
25277 time in attending to the affairs of these other companies?

A. Combining them all there may be a dozen or fifteen of them. I suppose all of the annual meetings combined would not take two hours of his time in a year.

Recess.

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Afternoon session.

By Mr. Chambers:

25278 Q. Mr. Carter, the Rowland report which you spoke about was made—or the Rowland appraisal, as you call it, Exhibit 399, was made by a man by the name of Rowland, who was employed by your company, was he?

A. No, the company did not exist when he made his appraisal.

Q. Whom did he make his appraisal for?

A. He made his appraisal for the committee representing the predecessor companies, the constituent companies.

Q. Well, it was made, was it, with a view to consolidation?

A. It was.

Q. Made for these companies who were absorbed by the consolidation?

A. Yes.

Q. And about when was it made?

A. My best recollection is that it was in the summer of 1884, June. I think it was completed in June, 1884.

Q. Had the terms of consolidation been agreed upon before then—when he made it or before? 25280

A. No, I do not think they had. I would not say as to that.

Q. Well, were they in the process of formation, the terms?

A. I do not know.

Q. Well, it was about that time, though, that consolidation took place?

A. Consolidation took place on November 11, 1884.

Q. That was when it was formally made, but it was in the process of making before that?

A. I do not know that the consolidation can be in the process of making. Consolidation was a fact which transpired on the 11th day of November, 1884. 25281

Q. Well, negotiations—

The Master: It had been in contemplation.

The Witness: Yes, it had been in contemplation, it certainly had, but that it was in process of formation, I do not know.

Q. Well, you had been negotiating a year or so, had you?

A. I don't know how long.

Q. Some time?

A. The representatives of these companies were negotiating. I had nothing to do with that.

Q. Do you remember your testifying before the Senate Committees that I asked you about a little while ago, being interrogated by Charles E. Hughes?

A. I was a witness before that committee.

The Master: Well, you remember being interrogated by Mr. Hughes?

The Witness: Yes, I do.

Q. Do you remember whether you signed your testimony or not?

The Master: Oh, that in another point I want to have disposed of here. I want to know whether
25283 there is going to be a stipulation waiving the signatures of witnesses, or whether witnesses have got to come down and sign it? If so, I want that done during this recess.

Mr. Ransom: The complainant will stipulate that the signature of witnesses will not be required on either side.

The Master: I want counsel for the defendants to let me know whether they will stipulate that or not. If not, I shall want the witnesses to come down here during that week and sign their testimony and get that out of the way.

Q. Do you remember being asked this quetsion by
25284 Mr. Hughes on the occasion of your examination before the Stevens Senate Committee: "Q. I believe you verified this report which was made by the Consolidated Gas Company to the State Board of Tax Commissioners for the year ending June 30, 1904?

A. The report of the Consolidated Gas Company, yes, sir."

Q. Do you remember that? Is that correct?

Mr. Ransom: I object to the question as incompetent and immaterial, it does not go to contradict anything.

Mr. Chambers: It will in a minute.

Mr. Ransom (continuing): To which this witness has testified on direct; it is not cross-examination.

The Master: I will allow it.

Mr. Ransom: Exception.

A. I do not remember it, no.

Q. Will you look at this and see if you did not make that answer—if that question was put to you and you made that answer?

Mr. Ransom: I object to it as not cross-examination, and it does not tend to contradict anything to which this witness has testified. 25286

The Master: Same ruling.

Mr. Ransom: Exception.

A. Well, the best evidence it would be the report itself.

Q. This is the report.

A. As secretary of the company that would devolve upon me, to verify reports to the State Board of Tax Commissioners, and I should assume that that record was correct.

Q. Now, the next question, "This report that I hold in my hand, Exhibit 59," and you answered, "Yes, sir": "Q. With your signature? A. Yes." That was the report of 1904? 25287

A. If that is what the record says, I assume it is correct.

Q. "Q. And you at that time stated that the statements contained in this report had been compiled from books and records of the company, and after careful examination of the same, and that they were a true full and correct statement of the property of said company and the value thereof at the close of the year ending June 30, 1904, as well as of its financial condition and affairs on the said date to the best of your

knowledge and belief? A. This is the statement." If that is there it is correct?

Mr. Ransom: I object to the question.

The Master: Same ruling.

Mr. Ransom: Counsel for the defendant made an objection which was sustained which related to the only portion of Mr. Carter's possible testimony which this could have been conceived to contradict.

Q. "Q. And that was true? A. That was true." —question put to you by Governor Hughes—"Q. Yes.
25289 Now, referring you to Schedule D of the report headed 'Statement of Assets and Liabilities June 30, 1904,' the item 'Real Estate and plant 19,673,075.42,' I wish you would take the report and tell the committee just what properties of the Consolidated Gas Company you included in that item as a statement of the value thereof"— to which you made answer, "I would like to explain to the committee that this statement is—does not purport to be the balance sheet of the company. It distinctly states here that it is not the company's balance sheet, nor does it furnish the cost of the property. Q. Will you not please answer my question"—

25290 Mr. Ransom: Are you putting a question to the witness?

Mr. Chambers: I am going to in a minute.

Q. Did you make that answer? These are correct as I am reading them, and I am asking you whether those questions were not put to you and those answers made.

A. I have no recollection independently of that record. I do not remember questions and answers made at that time.

Q. Have you any doubt but what it is correct?

A. I should assume that it was correct.

Q. That is all I am asking you to say to all of this.

Mr. Ransom: He has not said—

The Master: What is the point, Mr. Chambers?

Mr. Ransom: He has not laid any foundation for reading this in.

Mr. Chambers: It is to show the entire value of the real estate and plant was nineteen million dollars less than what he said here.

"Q. I would like you to answer my question. Will you please take the item in that report, the first item 25292
of real estate—"

Mr. Ransom: I object to the reading of this. There is no foundation laid for it, the witness was not permitted to testify to the value of the property at the time, or even to the computation made up from the testimony, in this case, as to what the value of the property was at that time. This does not contradict anything that this witness has testified to.

The Master: Then I will take it.

Mr. Ransom: And no foundation has been made.

The Master: I will take it. 25293

Q. "Q. I would like you to answer my question. Will you please take the item in that report, the first item of 'Real Estate and Plant, $19,673,075.42.' Now, that is a statement of the value of real estate and plant of the Consolidated Gas Company of June 30, 1904, is it not? A. That is exactly what it is. Q. That is exactly what it is? A. As near as we could determine." Now, is that a correct transcript of your testimony?

Mr. Ransom: I object to the form of the question. That is not the proper form. There is a

prescribed form for questions of that sort, which has not been put to this witness.

The Master: Overruled.

Mr. Ransom: Exception.

The Witness: If the record is correctly made, and I assume that it is so, that is what was said.

Q. It is the printed copy of the Court. Now, this question: "Q. That is it exactly. In other words, when you came to make up the report to the State Commissioners for the year ending June 30, 1904, you
25295 sought to ascertain fairly what the value of the property of the company was? A. Precisely. Q. And you took the various properties of the companies with which you were familiar, and you fixed what you decided to be the fair value of these properties, and stated these values in your report? A. Precisely. Q. And under the heading, 'Real Estate and Plant,' you put down the figures $19,673,075.42 as the value of the real estate and plant of the company? A. Yes, sir." If that is there, that is correct?

A. Yes, sir.

The Master: In other words, if it is so reported in that record, you so state it?

25296 The Witness: Exactly.

Q. And this question, "Q. Taking then the first item of 'Real Estate and Plant, $19,673,075.42,' and taking that as the value thus arrived at of the 'Real Estate and Plant,' state whether or not that covered all the real estate and plant of the company, that is to say the land and buildings thereon, and stations, the holders and the various apparatus which are connected with your business of gas making, and apart from the items which are separately mentioned later on, such as mains and services and meters, stoves and personal property, is that correct? A. That is correct."

And if that is there you made that answer to that question?

A. Yes, sir.

Mr. Ransom: I assume you will have no objection to my reading the rest of that testimony, Mr. Chambers.

Mr. Chambers: That question is not up yet.

Q. I continue to read from this same record:

"Q. I want to know what the property is that is detailed on this balance sheet of June 30, 1904, and totalized there which you, in making up the report of June 30, 1904, valued as real estate and plant, 25298 $19,673,075.42?

"A. Oh.

"Q. Now, then if you will give me that?

"A. Included in the value of real estate and plant, $19,673,075.42, what is itemized on the balance sheet as real estate plant and construction. It would include the extraordinary additions at the generating stations.

"Q. Just read on the record the items that are in the balance sheet, with the value—not the values but the figures opposite the items as they appear by the balance sheet which you entered in this item in the report of June 30, 1904, as of the value of 25299 $19,673,075.42?

"A. I have read the names of the items.

"Q. Just read that right on the record, if you will?

"A. That is all.

"Q. I mean read consecutively the items and the amounts opposite them from the balance sheet?

"A. You want me to read those on?

"Q. Yes.

"A. (Reading.) Real Estate, $11,163,537.08. Real Estate "M," $50,588.05. Plant, $15,318,197.68. Assessments, $2,353.98. Construction, $9,882.09.

25300 Robert A. Carter, Cross.

| | | |
|---|---|---|
| Extraordinary repairs, | 21st Street, | $2,718.62. |
| " | " 44th Street, | $3,424.26. |
| " | " 99th Street, | $557.98. |
| Generating Apparatus, | 21st Street, | $119,931.33. |
| " | " 44th Street, | $42,241.34. |
| " | " 99th Street, | $49,158.08. |

Down to that point, Mr. Hughes (indicating).

"Q. Down to this point (indicating)?

"A. Down to this point (indicating)."

Mr. Ransom: The document the Attorney General's representative has not produced.

25301 Mr. Chambers: Well, I have it, you need not worry about it. I have it if it is necessary.

Mr. Ransom: He is reading only very slight portions of the testimony.

Mr. Chambers: If that is there in that report, that is what took place, and those answers were correct?

The Witness: Exactly.

Mr. Ransom: It does not contradict; on the contrary it confirms. For example, on real estate it shows more than the valuation we have proved here.

Mr. Neumann: Why worry about it, then.

25302 Mr. Ransom: I am not worrying about it.

Mr. Chambers: Are you afraid of what your witness testified to on another occasion?

The Master: I think you ought to read in the next two questions after the word "indicating."

Mr. Ransom: I think the defendants are going into their case at this stage.

The Master: I have overruled your objection. It is rather meaningless without those next two questions.

Mr. Chambers: I would prefer to have the Court do that, I don't want to be bound by it.

The Master: I want it myself. Mr. Chambers read from page 212 of the Stevens record, certain questions and answers. I think the next two questions and answers should be read in. They are as follows:

"Q. Now, will you totalize those, please?

"A. $26,762,591.09 I make it.

"Q. Then the amount that you have read of real estate plant which were carried in the books at $26,762,591.09, appear in the balance sheet of June 30, 1904, at that total, you decided were of the value of $19,673,075.42? 25304

"A. Yes, sir."

Do you recall those questions and answers, and are your answers just the same, that if they are in the record they must have been asked and answered that way?

The Witness: Would my answers be the same as then?

The Master: No, do you recall those questions?

The Witness: I have no independent recollection of the record, which I assume to be correct.

The Master: You have no doubt those questions were asked and those answers given at that time? 25305

The Witness: I have not.

Mr. Chambers: I will read in a little more after the question read by the Master. (Reading.)

"Q. Now, the next item in the report of June 30, 1904, is mains and services, $4,261,156.39. What items in the balance sheet of June 30th, 1904, in your books are embraced in the item just read? Just read please upon the record a description and the figures given in the balance sheet.

25306 Robert A. Carter, Cross.

"A. Street mains, two items, $7,524,358.46, and $47,450.37; services $1,227,931.86.

"Q. Will you give the total of those please?

"A. $8,799,740.69.

"Q. And then mains and services which appeared in the balance sheet of June 30, 1904, at the book value of $8,799,740.69, you decided to be of the actual value of $4,261,156.39, and so entered them under the heading 'Mains and Services' on the report to the State Board of Tax Commissioners?

"A. Based upon the cost of reproduction less de-
25207 preciation.

"Q. Whatever it was based upon you entered it as actual value?

"A. Yes, sir.

"Q. Of these mains and services?

"A. Yes."

The Master: I suppose your answer is, as to whether you recall these questions, the same as to the others. If they are in the record you said it?

The Witness: Yes.

Q. Then this question was asked you:

"Q. When did you acquire the land for your plant
22308 over there, or when did the Astoria company? What is the name?

"A. The Astoria Company.

"Q. The Astoria Light, Heat & Power Company acquired?

"A. About five years ago.

"Q. With reference to that Astoria plant is it the purpose of the company to abandon all the generating plants in the city and have one plant at Astoria for the purpose of producting gas?

"A. That I understand to be the ultimate intent, Mr. Hughes.

"Q. Is that plant at Astoria also to take place of any of the gas producing plants of the New Amsterdam Gas Company?

"A. No, the New Amsterdam Gas Company, is producing on Long Island now and has no—

"Q. Is that gas producing plant—what is the name?

"A. Astoria Light, Heat & Power Company.

"Q. Then the Astoria Light, Heat & Power Company plant is simply to take the place of the present producing plants of the Consolidated Gas Company but not to take the place of the present producing plants of any other gas company? 25310

"A. That is not my understanding.

"Q. But it is to take the place of all the producing gas plants of the Consolidated Gas Company?

"A. Yes, sir.

"Q. So those will be all abandoned?

"A. Yes, sir, that is the ultimate expectation."

Those questions were put to you and those answers given, if they are in the record?

A. Yes, sir.

Q. Was that testimony about the plants of the Consolidated Gas Company true, that when you built the Astoria plant you were to abandon all these plants in the city? 25311

A. The expectation was at that time that we would have to do so by order of the city authorities, not only on account of the objection to the plants located in the Borough of Manhattan on the ground that they were a nuisance, but also as the result of the improvement of the water front which had already taken our 111th Street plant, and had taken our 18th Street plant. I think at that time it possibly took some of our 14th Street plant. That resulted in the construction of a marginal street between our 21st Street plant and the water, and was projected to cut off possibly all of

our plant, and we did apprehend that we would not be permitted to continue operating gas plants in the Borough of Manhattan.

Q. Now, you recall, do you not, that the date when you gave this testimony was in 1905? Do you recall now that the hearings were along in 1905?

A. Yes, I remember it was in 1905.

Q. It was in March, 1905, or about that time?

A. Yes.

Q. You recall, do you, testifying in the case of the Consolidated Gas Company vs. Mayor?

25313 A. Yes, I testified in those proceedings.

Q. Do you remember being called as a witness by Mr. Burr, who appeared for the city, or don't you remember just who called you?

A. No, I don't remember who called me. I remember appearing as a witness. It is quite possible I was called by Mr. Burr.

Q. I will show you from this record. Counsel has consented that I shall use this copy instead of getting the records from the clerk's office. On page 3083 of this record, folio 4222, it appears that you were called as a witness and examined by Mr. Burr. I read one of the questions put to you. In speaking

25314 of a complaint you made in 1905, which was verified the 26th day of March, 1906, he asked you as follows:

"Q. You stated in this complaint further, 'There is no method or evidence by which the value of the tangible rights to lay and maintain mains and pipes in the streets can be determined. There exists no market or demand for such right, permission or franchise. The price at which complainant's franchises or rights would sell under ordinary circumstances is merely nominal. The municipal authorities of the City of New York have never fixed any amount as the considera-

25315

tion for granting such franchises, and the right to lay mains and pipes in the streets has always been procureable from said municipal authorities without the payment of any monetary consideration therefor. The number of said franchises which may exist at any time has never been limited by said municipal authorities. The value of said right to occupy the streets does not exceed the cost of procuring such a right from the city, and that cost is nominal.' Is that a correct extract from this sworn complaint and did you so state?

"A. Yes, sir."

25316

Q. Is that correct?

A. I assume it is a correct record, in which event that is what was stated.

Q. That question was put to you and you made that answer?

A. Yes, sir.

Q. Have you now the original entries in the books of the Consolidated Gas Company, wherein the amount you spoke of this morning, $7,781,000, was entered?

The Master: What is that, the amount of stock issued for franchises?

Mr. Ransom: Franchises and rights.

Mr. Chambers: That includes the intangible property?

25317

Mr. Ransom: Franchises and rights, it is called.

Mr. Chambers: Yes.

A. Do you ask if I have them here?

Q. No, if the company had the original entry in that amount.

A. Yes, the original journal and original ledger show those entries.

Q. Are you willing that the defendants should have access to that?

A. Yes, sir, certainly; they have had access to that for several months if they wanted it.

25318 Robert A. Carter, Cross.

Q. Also the minutes; have you the minutes of the corporation relative to that entry in that amount, the original minutes, which you will give us access to?

A. I do not think there are any original minutes which would have any reference to those opening entries in the books.

Q. Did the Board of Directors of the Consolidated Gas Company pass on this matter?

Mr. Ransom: It is in an agreement which is in evidence.

The Master: Let the witness testify.

25319 Q. Did the Board of Directors before that entry was made upon the books, or after it was made, pass upon that sum of $7,781,000?

A. No.

Q. It was not brought before the Board of Directors at all?

A. Of the Consolidated Company?

Q. Yes.

A. They approved the balance sheet probably. They have always had an accounting committee that passed upon the accounts and balance sheets and so forth.

Q. Will you give the defendants now access to the
25320 original minutes of the Board of Directors during that period of time surrounding the consolidation, and the original entries in the books, and let us have them all so we may examine them?

The Master: I suppose Mr. Carter wants to take the advice of counsel on that.

Mr. Chambers: Then I will not press it for the present.

Q. You would like to confer with counsel?

The Master: I am inclined to think, Judge Ransom, that counsel for the defendants are en-

titled to that, to an examination of the books for those opening entries.

Mr. Ransom: Any request that any of the defendants has made for any of the minutes of this company on any specific subject has been complied with.

Mr. O'Brien: You know what the answer is, your Honor. They have refused to give it and they brought to me a copy of what they said were certified excerpts.

The Master: Judge Ransom, unless you will stipulate on the record to permit counsel for the 25322
defendants or their experts to examine the minute book having entries with reference to the organization meeting and the authorization of issuance of stock, whether for tangible or intangible property, and the similar items, I shall direct you to produce them in court for purposes of cross-examination. I think it is a proper record that they are entitled to for cross-examination purposes.

Mr. Ransom: I agree with you fully, your Honor. If they have not yet fully examined them we will furnish them.

Mr. O'Brien: Why do you say that? You 25323
know I was refused it when I was—

The Master: Bring it down tomorrow.

The Witness: The first minute book. Do you want the first journal and first ledger?

The Master: No.

Mr. Ransom: Just the minute book.

The Master: They have had access to all the journals and ledgers. That is not any other ledger or journal than the one they had already.

The Witness: No.

25324 Robert A. Carter, Cross.

The Master: Bring down the original minute book so that you can point out the entries authorizing the setting up or issuance of these stock items.

Mr. O'Brien: Do you tell him now, your Honor, to bring down the minute books of the complainant company?

The Master: All of them?

Mr. O'Brien: From 1906.

The Master: No, I will have him bring down this book on the point that Mr. Chambers has
25325 raised. Then I will direct them to bring down any other minute book on some particular point on which cross-examination is proper. I will not permit a fishing expedition into them.

Mr. O'Brien: I would like to request for the purpose of my cross-examination tomorrow that they produce the minute books, particularly those portions of the minutes that have to do with the erection of the office building, the erection of the building at 57th Street, the making of all coal and oil contracts, the making of all contracts with respect to the purchase of mains or purchases of pipe, the minutes that bear any reference to
25326 transactions with the Edison Electric Light Company and United Electric Light & Power Company, and resolutions that have anything to do with this question of transfer of gas; and I want the stockholders, the names of the stockholders, the list of the stockholders at the closing of the books.

The Master: You better serve a subpoena on Mr. Carter for those.

Q. Do you remember how that item of $7,781,00 was carried by the company?

A. As an asset in its books, representing a corres-

ponding amount of stock issued for it—for that asset.

Q. Do you remember what the title of the account was?

A. "Franchises and Rights."

Q. That is the title in the ledger?

A. Yes, sir.

Q. Do you remember how it was called in the minutes?

A. I do not think it was called in the minutes, but if so it is a fact which will disclose itself tomorrow morning. 25328

Q. Did that item of $7,781,000 cover any patent rights of any kind?

A. I do not know.

Q. It may have, may it not, Mr. Carter?

A. I do not know.

Q. That is, you would not want to say one way or another, would you?

A. I have said I don't know.

Mr. O'Brien: Would your memory be refreshed?

The Master: Mr. O'Brien has not reached his cross-examination yet.

Mr. O'Brien: That is a useful question, your Honor. 25329

The Master: It may be at the proper time.

Mr. Chambers: I will ask him that.

Q. Is there something by which you can refresh your recollection as to whether that—

A. I do not know whether there is or not.

Q. That is, you do not know whether there is anything that will tell you whether part of that or any of it was for patents?

A. I don't know, no.

Q. For some reason or other you said you did not issue all of the capital stock in 1884; your authorization was thirty-nine million odd. Will you give me that exact figure?

A. The total amount of stock authorized was $39,078,000. The total stock issued at that time was, $35,430,060.

Q. Have you since issued that remaining stock?

A. Yes.

Q. It is all issued now, is it?

A. All issued, and a great deal more besides.

25331 Q. You have eighty now?

A. One hundred million par value of stock outstanding—one hundred million dollars par value, approximately.

Q. It is on that one hundred million dollars that you are now paying seven per cent?

A. Yes.

Q. How many shares in all?

A. I think that is—

Q. Well, $100 per share.

A. A million shares.

Q. After you issued the 35,430,000 shares—

A. No, that is dollars you are talking about now.

25332 Q. Well, dollars—when did you issue the rest of the authorized, do you know?

A. In '97, '98, and '99, I think.

Q. You mean 1897?

A. 1897, 1898 and 1899.

Q. Then did you increase your capital stock?

A. Subsequent to that.

Q. So that you paid the dividends, you told me a little while ago, on that capital stock during those periods?

A. What capital stock?

Q. I mean you first paid the dividends you told me on the $35,430,000?

A. That is right.

Q. Then you paid later on all of that authorized issue?

A. Not until the stock was absolutely issued and in the hands of the public. We did not pay ourselves a dividend.

Q. That is what I mean.

A. No.

Q. Then that continued until you increased your capital stock, and when was that? 25335

A. We increased our capital stock—

Q. The first time.

A. In 1899, I think.

Q. And to how much—how much in dollars?

Mr. Ransom: All of this is evidenced by resolutions which are in evidence—put in evidence on the 22nd of July.

A. The next issue of stock was in April, 1900.

The Master: What did that carry it up to?

The Witness: $54,595,200.

Q. It was on that that you paid the dividends during that period—from then on until you increased again? 25334

A. It was increased in October of that year.

Q. Again?

A. Yes.

Q. To how much?

A. We issued par value, $13,648,800.

Q. It was on that, then, that you paid the dividends you told me a little while ago—from that time on, on that amount of stock?

A. After October we paid dividends on the stock that was outstanding.

Q. I mean increased stock?

A. Yes.

Q. Then when next did you increase from thirteen million?

A. In February, 1901.

Q. You increased again?

A. We issued $900,000 of stock.

Q. Then when did you increase again after that?

A. Well, between 1900 and 1902 we issued our capital stock to retire certain debentures that were issued in exchange for the capital stock, common and preferred, of the New Amsterdam Gas Company. The total amount issued for the New Amsterdam
25337 stock was $4,154,350.

Q. And when did you next increase your capital stock after that? Can you give them all to me?

A. Well, change that last figure to $3,773,600. The next was in 1903, when we issued $6,562,500 par value of stock.

Q. Then the next one?

A. $519,900, issued in 1903. That simply closed out a balance theretofore unissued, though authorized. We sold that in the market at $219 net per share.

Q. Then when was your next increase, Mr. Carter, after that?

A. We issued beginning in 1907 and up until 1910,
25338 in exchange for convertible debentures that were issued in 1904, approximately $20,000,000 of debentures, capital stock for the purpose of redeeming those debentures in the amount of $19,816,500 par value of capital stock.

The Master: At what dates?

The Witness: Between 1907 and 1910, the bulk of that. I should say it was 1909.

Q. Did you get up to one hundred million dollars in 1909?

A. Approximately.

Q. And you have not since 1909 down to date increased your capital stock?

A. We issued convertible debentures in 1915, February 1, 1915, convertible at the expiration of three years and redeemable at the expiration of five years. $25,000,000 approximately of convertible debentures were issued at that time.

The Master: Has any stock been issued against those debentures?

The Witness: Some stock has been issued against those debentures: $536,500 of capital stock has been issued to retire the debentures issued in 1915. The balance of them are outstanding and are payable February 1, 1920. 25340

Q. There is a stockholders' meeting called now too for the purpose of increasing your capital stock?

A. Called for the 29th of December.

Q. For the purpose of increasing your capital stock?

A. No, for the purpose of authorizing the issue of securities to the stockholders.

The Master: Securities to the stockholders?

The Witness: Yes, to which the stockholders have the privilege of subscribing, the proceeds of which will be used to retire the convertible debentures which mature on February 1, 1920. 25341

Q. You said that upon the consolidation you issued stock for some tangible property which you said amounted to $27,649,060. Was that amount of property set forth in the Rowland appraisal, less a little over $2,000,000 that you said were outstanding obligations against the property of these companies that were absorbed; is that right?

A. $2,329,000 was reserved for the purpose of retiring those outstanding obligations.

Q. And you ascertained that $27,649,060 or took that from the Rowland appraisal?

A. We took the amount of the outstanding obligations.

Q. From the Rowland appraisal?

A. From the Rowland appraisal, and also an amount of $15,940 par value of stock, which was held for sundry adjustments, making a total that was not issued to pay for the property of $2,344,940.

Q. Did you know about the property that was taken over—what property was taken over on the consolidation, from these other companies generally?

A. Yes.

25443 Q. They were gas plants, were they?

A. Yes, gas plants, mains, services, meters, structures.

Q. Do you know where they were?

A. Yes.

Q. Where were some of the gas plants?

A. The plant of the old New York Company at 21st Street.

Q. Is that there now?

A. Yes.

Q. I mean the Consolidated has that plant yet?

A. Still in operation.

Q. At 21st Street?

25344 A. 14th Street and 18th Street of the old Manhattan Company.

Q. Is that there now?

A. The old Eighteenth Street plant was condemned and taken by the city; the Fourteenth Street plant is still an operating plant in first-class condition, and I am not sure that it has not been fired up by this time for the purpose of emergency reserve for this winter during the peak period of maximum demand.

Q. What other plants were taken over?

A. The 42nd Street plant of the Metropolitan Gas

Light Company, the 44th Street plant of the Municipal Gas Light Company, the 99th Street plant of the Knickerbocker Gas Light Company, the 111th Street plant of the Harlem Gas Light Company.

Q. What about the 44th Street plant? That is not in existence now?

A. Only as a holder station at the present time. The dock operations of the city at that point resulted in the condemnation of the property there and the plant thereafter could not be operated, what was left of it.

Q. And the 111th Street plant? 25346

A. The city's improvements up there resulted in the condemnation of that plant for what is known as "Little Italy Park." They took the bulk of that plant under condemnation proceedings.

Q. Do you know whether Rowland, who made the Rowland appraisal, is living now?

A. No, he is not living.

Q. He is dead?

A. Yes.

Q. Do you remember when he died?

A. I do not, no.

Q. We cannot call him then, very well?

A. Not very well. 25347

Q. When was the 132nd Street holder first considered inadequate to serve that territory, the Washington Heights territory?

A. I think back in 1910, or thereabouts.

Q. And that is the first when you considered it inadequate?

A. I would not say that. It was the time when conditions culminated in an absolute necessity for supplementing the holder capacity for that territory.

Q. From what sources was that holder at 132nd Street supplied at that time, if you know?

A. From a number of stations, I should say. Probably got some gas from Astoria, probably got some gas from Ravenswood, 99th Street, 115th Street. Any of those manufacturing plants might have been feeding into the transfer mains that supplied the 132nd Street holder.

Q. How did you supply that territory up in there before you put in the Kingsbridge holder?

A. Supplied—are you speaking now of the Borough of Manhattan or of the Borough of the Bronx?

Q. Washington Heights, up to Dyckman Street?

25349 A. Borough of Manhattan.

Q. Yes.

A. That was supplied from the 132nd Street holder.

Q. Entirely, was it?

A. Yes, entirely, at that time.

Q. Now, you have set up a figure here of $3,616,000, for what you call working capital?

A. As of December 31, 1905?

Q. Yes.

A. Yes.

Q. Now, of that amount you have $2,000,000, of accounts receivable?

A. Yes.

25350 Q. Now, what accounts receivable do you include in that amount?

A. The same as at the present time, of the same character, amounts due from consumers, from purchasers of supplies, from customers for whom service has been performed, sundry debtors for residuals, contractors for labor and material furnished in connection with street operations or other services rendered by the company, and items of that character. Principally at that time there was included a very substantial amount due from the City of New York for unpaid bills.

Q. Is that the exact amount shown by the balance sheets that you have here?

A. As of 1905?

Q. Yes.

A. I should think not.

Q. In what way does it differ from the balance sheet?

A. I cannot recollect.

Q. Have you any way of giving us the various items, the different amounts in that item accounts receivable, how much was owing from gas consumers and the like? 25352

A. As of December 31, 1905?

Q. Yes.

A. I haven't it here. I can furnish you with it.

Q. Will you produce it for us, the items?

A. Yes.

Q. Is that itemized, that accounts receivable?

Mr. Ransom: It is all in the books, the defendants can get it as well as anybody else, if they haven't it already.

The Master: I won't direct Mr. Carter to get it. Your experts can look at the books and get it.

25353

Mr. Chambers: No, it is a good deal different from the accounts receivable in the balance sheet.

The Witness: Is it more?

Mr. Chambers: Yes, sir, it is more.

The Witness: It is more.

Mr. Chambers: Yes.

Mr. Ransom: What balance sheet is it, the balance sheet according to Maltbie, or what?

Mr. Chambers: According to the reports to the Public Service Commission.

The Witness: May I see it?

Mr. Chambers: Yes (handing paper).

Mr. Ransom: I would be glad to have it in evidence.

Q. Did you see the item account receivable there, $1,867,484?

A. This has sundry debtors $1,159,000, showing there was exactly $3,000,000 in the accounts receivable from consumers and from sundry debtors here; we include $2,000,000 instead of $3,000,000 at that time. I knew that the amount that was due was in excess of the amount we claimed a right to earn a

25355 return upon.

Q. Well, you have got here accounts receivable?

A. Well, that is the same thing.

Q. And then in here it is accounts receivable?

A. Accounts receivable includes sundry debtors. It is a mere division on the books, but they are all accounts receivable.

Q. It does not agree with those two, even?

A. No, that is a million dollars less than those two.

The Master: Those two meaning the items of sundry debtors and accounts receivable on that 1905 report?

The Witness: Yes, sir.

25356 The Master: The balance sheet?

The Witness: I do not know what it is, but assuming the figures are correct.

Q. Does it include what other gas companies owed you?

A. It includes a great many things.

Mr. Chambers: It seems to me, since he has it, he ought to furnish us—here is a variance between a balance sheet as shown by the Public Service Commission and his items.

Mr. Ransom: We will take the full amount, if you are willing to stipulate it.

The Master: I won't make any direction. Next question.

Q. Have you them there so that you can read them off?

A. No, I have not.

Q. How much of that is actually made up of money due from gas consumers as of that date? How much of your $2,000,000 is made up of that item?

A. You are referring to 1905?

Q. Yes, December 31?

A. I told you I haven't any detail on it whatever.

Q. How much of it is made up of money due from 25358
other companies?

A. None of it, I should say.

Mr. Ransom: By that you mean other gas companies?

The Witness: Other gas companies I presume you mean.

Q. Yes. If I am not through with you between now and four P. M., will you bring down those items in the morning?

A. No, the Master has excused me from doing so, as I understand it.

Q. I did not understand he directed you not to, but he does not want to make a delay to get them. 25359

The Master: I won't make any direction. I think you have access to the books.

Mr. Chambers: Can't you see we cannot check this. It is so different we cannot tell what he used. It is not like either one of these items.

The Master: Mr. Carter can refresh his recollection, if he can, between now and tomorrow morning and give the figures, if he can.

The Witness: I will get somebody to help me.

Q. Now, materials and supplies, what was that for? What materials and supplies, can you give me the details of it?

A. What are you talking about now, Mr. Chambers, 1905?

Q. Yes, $616,470.08?

A. That was materials and supplies employed in the company's gas business, including gas making material, coal and oil and material required in the repairs of mains and services and the setting of meters and appliances and things of that nature.

25361 Q. Materials and supplies you had on hand?

A. On hand.

Q. Were there any materials and supplies for any of the other companies?

A. Not any.

Q. For the Astoria Company?

A. None.

Q. Any material and supplies for construction?

A. Oh, I should say very possibly. That would not change its character, you understand, as an asset.

Q. How much for that?

A. It might be a great deal of it.

Q. Was for materials and supplies for construc-

25362 tion?

A. It is impossible to say. But I say a great deal of it. I think I will have to correct that. I should say not a great deal of it used in construction.

Q. Not a great deal?

A. Not a great deal at that time was carried for construction purposes.

Q. Could you give us the details of it, materials and supplies?

Mr. Ransom: I object to it. They have the same access to it that the complainant has, it is a book item.

The Master: If Mr. Carter can refresh his recollection between now and tomorrow morning, I will let him do it.

The Witness: I might borrow that from Mr. Maltbie, perhaps that will help on the materials and supplies (examining paper). I do not know what more detail you want than you have here. You have got coal $439,548.48; you have got other materials and supplies itemized at $134,993.85.

Q. That adds up to more than this?

A. You have got gas oil $40,465.23. Those I 25364
should say would aggregate approximately the amount that was stated as the—

Q. $616,000?

A. Stated as required for materials and supplies as of December 31, 1905.

Q. Those three amounts you read?

A. Yes.

Q. This is $616,000?

A. I will tell you how much they amount to, if you will wait a moment.

The Master: No, we will have to adjourn.

Adjourned to Wednesday, December 10, 1919, at 25365
9:30 o'clock A. M.

Last Complainant's Exhibit 400.
Last Defendants' Exhibit AA35.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 25369

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 11, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant NEWTON.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 25370
MR. O'BRIEN, Counsel for defendant Swann.

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ROBERT A. CARTER, resumed.

CROSS-EXAMINATION CONTINUED BY MR. CHAMBERS:

Q. Mr. Carter, have you the minute book which you said yesterday you would bring down?

A. We have the first minute book of the company 25371
in which are recorded the consolidation agreement and other transactions in connection with the formation of the Consolidated Company.

Q. Have you produced it here?

Mr. Ransom: I have it.

Mr. Chambers: Will you hand it to us so that we may examine it.

(Mr. Ransom hands book to Mr. Chambers.)

Mr. O'Brien: Have you brought down the other matters?

Mr. Ransom: I object to the interruption.

25372 Robert A. Carter, Cross.

The Master: Did you serve a notice to produce?

Mr. O'Brien: Yes.

The Master: All right, when the time comes we will find whether the subpoena has been complied with.

Mr. Chambers: Before I examine this I want to ascertain if counsel is going to make the point that if I look at it it is offered in evidence.

Mr. Ransom: I do not so urge.

Mr. Chambers: I ask the Court to allow us to
25773 look at it without thereby offering it in evidence.

The Master: You can ask the witness any questions you like and show him the minute book.

Q. Take the minute book, Mr. Carter, and please turn to the entry to which I referred yesterday?

A. What entry was that?

Q. That is the entry of the seven million dollars—

The Master: Authorizing the issue of some stock there.

The Witness: We haven't a record directing that certificates be printed and issued, etc.

The Master: Get what you have on the ques-
25374 tion of issuing stock.

The Witness: You know better than I do about that (referring to Mr. Ransom).

Q. Take this minute book, please, and state what the entry is in there at the time of the consolidation so far as it relates to the amount of $7,781,000 which you said was for intangible property?

Mr. Ransom: I object to the question.

The Master: The witness is looking for it.

Mr. Ransom: There was a legislative act, which is in evidence; there was an agreement authorized thereby, which is in evidence; there was

a certificate of incorporation set forth in the agreement, which is in evidence. All of those things are set out in the minutes of the first meeting.

Q. How long a period does that book cover, Mr Carter?

A. I will answer that question in a few moments.

Q. Never mind. Is it the first minute book?

A. Yes, sir.

Q. The very beginning of the Consolidated Company?

A. The very beginning—with an exclamation point. 25376

The Master: The first entry is a minute of a meeting of the Board of Trustees, November 10, 1884, at No. 4 Irving Place?

The Witness: Yes, sir.

Q. I asked you yesterday, Mr. Carter, about the item of accounts receivable, $2,000,000. Did you bring down your working papers on that so you can give me the details?

Mr. Ransom: Accounts receivable as of what date?

Mr. Chambers: December 31, 1905.

A. Shall I read the items in detail as they appear upon the books? The items are: 25377

| | |
|---|---|
| Sundry Consumers | $1,857,826.51 |
| Sundry Debtors | 1,159,849.17 |
| Accounts Receivable, Branch Offices | 7,931.78 |
| Installments | 1,725.75 |
| General Suspense | 59,326.85 |
| Making a total of | $3,086,660.06 |

The amount stated to be required for accounts receivable as working capital in the prior proceedings is two million dollars.

Q. What goes into the two million?

A. Two million out of that $3,086,660.06 is stated to be the requirements of the company for accounts receivable as working capital.

Q. That is, the two million is an estimated amount?

A. Largely, I should say.

Q. Give us once again, will you, the amount due from consumers?

A. $1,857,826.51.

Q. Is that due for gas or gas appliances?

A. Gas.

25379 Q. Just gas?

A. Just gas.

Q. What was that Sundry Debtors made up of?

A. I can give you an idea of what it includes, amounts due for purchases of our residual products, coke, ammoniacal liquor, tar, oil tar, water gas tar; due from contractors in connection with street operations, probably more particularly at that time in connection with the subway operations; obligations created by reason of the disturbance of our distributing system—

Q. Those would be extraordinary expenses?

A. There must have been extraordinary expenses
25380 in here or we would have claimed three million dollars, instead of two million.

Q. Well, you just named some extraordinary expenses that were in your two million?

A. No, I have not. I have named what were extraordinary expenses in sundry debtors, which I have given as $1,159,849.17. If we added that to the amount due of sundry consumers we would have three million dollars in those two items.

Q. How much did you take for sundry debtors?

A. I didn't take anything. I took an amount for accounts receivable including sundry debtors at $2,000,000.

Q. Then you did not fix in your mind just what proportion of your accounts receivable was made up of sundry debtors?

A. No.

Q. But you had in mind some amount for sundry debtors?

A. No, I did not have in mind for sundry debtors any particular amount.

Q. That is what I mean.

A. Considering these items aggregating $3,000,000, of which there were due for gas bills alone $1,857,000, I determined $2,000,000 to be a proper provision for 25382
accounts receivable as an item of working capital.

Q. What else did you include in sundry debtors—I interrupted you as you were telling us.

A. I should say that would be all.

Q. Now, the accounts receivable from gas consumers—of course that could not include any of the prepaid meters where the consumers paid the money in the meters?

A. No.

Q. It was just those consumers who did not have the quarter meters?

A. Precisely.

Q. Now, materials and supplies, what goes to 25283
make up the sum of $616,470?

Mr. Ransom: I object to the question, Commissioner Maltbie has, and showed to the witness yesterday, the full detail of these things, and the witness read from that the "Material and Supplies" items as of that time.

The Master: Judge Ransom, I am going to allow this examination to go on until the 5th of January. They can go as far as they like. I am in no hurry.

Mr. Ransom: I merely call attention to the tactics by which this case is being delayed.

The Master: It is not being delayed, because they are not going forward until the 5th of January.

Mr. Chambers: There isn't a word of fact in which he said, and Mr. Maltbie has not the figures.

The Master: It doesn't make any difference, I am going to give you the widest kind of latitude.

Mr. Chambers: It is to our advantage not to
25385 prolong this, it will give us more time.

The Master: Go ahead.

Q. Can you give me that?

A. Yes. I think these are obtained from the same source, from the same tabulations that your own statement is.

| | |
|---|---|
| Coal | $442,297.92 |
| Coke | 9,340.50 |
| Fuel Oil | 148.00 |
| Gas Oil | 40,465.23 |
| Lime | 833.41 |
| Iron Mass | 1,097.14 |
| Sundry Supplies | 692.71 |
| 25386 Miscellaneous Repair Material | 134,993.85 |
| Pipe and Specials | 107,056.19 |
| Gas Appliances | 28,547.93 |

Q. Now, those figures you have given me add up to more than $616,000.

A. It adds up $765,472.88. There are included two items there which to the best of my recollection were not considered by me as a part of the material and supplies at that time.

Q. Which were those?

A. Pipe and specials, $107,056.19; gas appliances $28,547.93.

Q. So you excluded those two?

A. My impression is that I did not include them at that time in considering the amount that should be provided for material and supplies.

Q. How did you determine the amount of cash of $1,000,000?

A. I believed at that time that that was a proper provision at that time for the item of cash, or for working capital, so far as the item of cash was concerned.

Q. That is, you just took an arbitrary sum?

A. Not an arbitrary sum at all, it was a sum based upon my judgment, my knowledge of the company's requirement and its finances. 25388

Q. It was your opinion then?

A. Exactly, it represented my opinion.

Q. Did you deduct anything for liabilities?

A. I deducted nothing for liabilities.

Q. For instance, from the sundry creditors' account, did you deduct any liabilities?

A. Did I deduct any liability from sundry creditors?

Q. For sundry creditors.

A. I did not.

Q. Does the item for materials and supplies, $616,470.08, include materials and supplies when received and not as paid for? 25389

A. It took no account of when they were received or when they were paid for, but it represented the value at cost of the materials and supplies in stock at that date, approximately, as the basis—

Q. That disregarded when they were paid for, but rather took account of the supplies that you had received?

Mr. Ransom: I object to the question as vague and indefinite.

Q. They are charged to *the account as received?*

A. It took cognizance of our requirements as working capital for the item of material and supplies representing our investment in materials and supplies.

Q. Which had been received?

A. Yes, which had been received and were in stock.

Q. And when you paid for them you did not consider at all?

A. Not at all.

Q. For the details of accounts receivable applicable to the gas business as of December 31st, 1918, will
25391 you please give us once more the cash and materials and supplies that you used to make up the $4,627,886, if that is the sum?

Mr. Ransom: Objected to.

The Master: I will allow it.

Q. Cash; what was that?

A. $1,500,000.

Q. Materials and supplies?

A. The value of the material and supplies as of December 31st was $1,532,891.

Q. Was that just the same as the materials and supplies for the year ending December 31st, 1905? I mean you treated those materials and supplies in the
25392 same way, materials and supplies received, which the company had received, did you?

A. I determined from a consideration of the cost of material and supplies at that time and other times that we would require provision in the shape of working capital for the item of material and supplies of approximately a million and a half dollars.

Q. Then that is more or less of an estimate, that sum?

A. No, it is not an estimate. It is my opinion based on the amount that we have invested ordinarily in that

kind of assets. It is my opinion as to the provision that should be made in these proceedings.

Q. Why did you take such an odd sum?

A. What?

Q. Why did you not take a million and a half instead of $1,532,891?

A. I did not take $1,532,891, because the aggregate amount that I have included in the investments of the company as of December 31st in its gas business was $4,625,000.

Q. You gave us that amount as the amount you used. 25394

A. I gave that amount as the amount that was invested at that time in the gas supplies.

Q. What amount did you take, then?

A. No separate amount for material and supplies. I covered it all in one amount of $4,625,000, including, as I say, for material and supplies, approximately a million and a half dollars.

Q. What part of the $4,625,000 represents materials and supplies?

A. I say approximately $1,500,000. Approximately.

Q. Did you take into account, then, so far as materials and supplies were concerned, materials and 25395
supplies received by the company or that the company would have on hand?

A. I should say that it was the average cost of that particular asset of the company, material and supplies, as an asset of the company that—

Q. That they had bought and received; that they had ordered and received?

Mr. Ransom: What do you mean by ordered and received?

A. I do not know what you are talking about. I am talking about an asset of the company.

Q. Yes.

A. We do not have assets that are not in our possession.

Q. But you did not consider when you paid for them, though; you did not take that into account?

Mr. Ransom: He said he did.

The Master: Do not interrupt; let Mr. Carter answer.

Mr. Ransom: The Attorney General might be fair.

Mr. Chambers: I have been fair.

25397 The Master: Do not interrupt.

Mr. Chambers: I do not care for Judge Ransom's opinion on my fairness or unfairness; it is entitled to no weight.

Q. Will you state, Mr. Carter?

A. The amount I included as representing an investment in an asset termed material and supplies was a million and a half dollars, approximately.

Q. Supposing you had purchased 10,000 gallons of oil and you had received it and had it for ten days, but you had not paid for it or would not pay for it for twenty days more; you would consider that, would you not, as materials and supplies on hand?

25398 A. It would depend whether it was on hand.

Q. Well, if you had actually received it.

A. If it was on hand it would be—

The Master: The point Mr. Chambers is trying to make is that in your figure of materials and supplies on hand you took the materials and supplies on hand irrespective of whether the bill had been paid for it or not?

The Witness: Absolutely.

Q. As to cash, how did you determine the $1,500,000 cash on hand? The same as you did for the year ending December 31, 1905?

A. The same consideration was given to the subject as of December 31, 1918, as was given for December 31, 1905, only the requirements at this time are greater than then.

Q. Well, $500,000 greater?

A. $500,000 greater now than then. I believe that to be the case, yes.

Q. That whole amount is your opinion?

A. It is my opinion.

Q. Do you know how much cash the company had on hand December 31, 1918?

A. Between twelve hundred and thirteen hundred 25400
thousand dollars. I do not recall the exact amount.

Q. It was probably the figure we have here, $1,256,292.36; that is undoubtedly, or probably correct?

A. I do not know what is included there, whether you have got the branch offices or not.

Mr. Ransom: That is only the amount in bank, as he testified yesterday.

The Witness: I do not know whether it includes other cash.

Mr. Ransom: It is cash in bank.

The Witness: But it is between the figures I have mentioned, twelve hundred thousand and 25401
thirteen hundred thousand.

Q. To that we have another $41,700 cash in offices and stations; that makes $1,297,992.36. That probably is correct?

A. I would not question any figure between twelve hundred and thirteen hundred thousand dollars that you might have.

Q. Can you give me the details of the accounts receivable that you included in the $4,625,000?

A. As of 1918?

Q. Yes, December 31, 1918.

Mr. Ransom: I object to that because that was offered in evidence and received as an exhibit yesterday, the full details.

The Master: Let me see it (taking paper).

Q. The amount you gave totals up $1,594,995.23.

The Master: That is right. Next question.

Q. Then you used $1,625,000?

The Master: Ask him how he makes that up.

Mr. Chambers: Yes.

Q. How did you make that up?

The Master: The details that were furnished would show something less than that. What did you add to it to make it $1,625,000?

25403

A. Where do you get your $1,625,000?

Q. Taking cash and materials and supplies away from the $4,625,000.

The Master: That question will not be allowed.

Mr. Ransom: The figure is $1,594,995.23.

Mr. Chambers: No, it leaves $1,625,000. A million and a half for material and supplies, and a million and a half for cash.

A. In determining the total amount of working capital of $4,625,000 I considered those items that, given in detail, are, cash $1,500,000, accounts receivable $1,594,995.23, materials and supplies $1,532,891, and I concluded that $4,625,000 of working capital would meet our requirements and would be a proper provision for our working capital.

25404

Q. And $1,625,000 accounts receivable is an estimated amount or figure?

Mr. Ransom: I object to that. There is no such testimony.

The Master: Objection sustained.

Q. What is the $1,625,000 accounts receivable?

Mr. Ransom: There is not any figure $1,625,000.

Mr. Chambers: There is; I will leave it to Mr. Carter.

The Master: Where?

Mr. Chambers: He said he took $1,625,000 in cash.

A. I said approximately $1,600,000. I will call it $1,625,000 if it will relieve your mind any.

Mr. Ransom: You took $4,625,000 and made it a round figure.

Mr. Chambers: He said he took $1,500,000 in cash and $1,500,000 in materials and supplies.

The Master: Yes, approximately. 25406

Mr. Chambers: Now, adding those two together and subtracting them from the $4,625,000—

The Master: I will not allow the question. The figures given by Mr. Carter are for cash $1,500,000, accounts receivable $1,594,995.23, materials and supplies $1,532,891, and he gets the amount $4,627,886.23, and he roughly figures $4,625,000 as necessary working capital. There is no such figure as $1,625,000.

Mr. Chambers: You asked me how it was computed.

The Master: Yes, and I do not agree with you. 25407

Mr. Chambers: He has just testified a minute ago that that was the fact. You will see it in the record. He finally took $1,500,000 cash and $1,500,000 for materials and supplies in making up his $4,625,000.

The Master: Next question.

Mr. Chambers: Exception, where the Master refuses to allow me to ask him about the $1,625,000 for accounts receivable.

Q. The materials and supplies. Can you give me the details of that?

A. The $1,532,891 consists of coal $443,177.24, coke $896.03, gas oil $115,615.42, iron mass $1,855.07, sundry supplies, $3,717.55, miscellaneous repair material $203,686.82, gas appliances $636,429.61, pipe and specials $117,495.77.

Q. Do those add up to more than $1,532,891?

A. They do not.

Q. Do those make that exact sum?

A. They do not.

25409 Q. They are less?

A. Slightly.

Q. Was it your opinion that that sum of $1,532,891 should be the amount?

A. I have stated what the amount should be $4,625,000 for working capital.

Q. Your materials and supplies on December 31st, 1918, do not amount to that sum.

A. $4,625,000? No, they do not.

Q. No. Do not amount to the sum of $1,532,891?

A. But the cash, accounts receivable and material and supplies that I have included in this memorandum are the basis of my opinion that the provision for

25410 working capital should be $4,625,000.

Q. What I mean, your materials and supplies on hand on December 31, 1918, does not amount to the sum which you give here?

A. No. And the cash does not amount to within $150,000, approximately, of what I believe should be provided.

Q. That is what I am getting at.

A. Yes.

Q. This is your opinion of materials and supplies, is it, this sum?

A. Yes. My opinion includes materials and supplies of approximately $1,525,000.

Q. Now, take Exhibit 401, have you that, Mr. Carter?

A. Yes, I have it.

Q. Take the first item, "Sundry Consumers." Was that entirely for money owed by gas consumers to the company on that date?

A. $941,818.18, yes, that is due from sundry consumers.

Q. No appliances in that?

A. No.

Q. What are those two items there, accounts receivable, installments, sales branches, on this exhibit? 25412

A. Why, some of our appliances are sold on the instalment plan, and this remains a balance unpaid by the consumers who availed themselves of that means of purchasing appliances.

Q. Then it relates entirely to appliances?

A. Yes.

Q. Now, the accounts receivable billed as unpaid, branches, $141,326.72, is that appliances?

A. Yes, I should say that was probably all appliances. There may be some small bills in there for work done by the fitting department.

Q. Well, on appliances?

A. In connection with the connecting of appliances, 25413
something that the consumers pay for, which is billed to them at cost.

Q. The Lexington Avenue Subway expenses incurred by Company not yet Reimbursed, $279,758.54, what is that?

A. This represents expenditures by the company which we believe should be reimbursed to us, and which we have therefore not charged as an expense on that account. If we had charged it as an expense, it would have appeared in the expense account covering that period from 1905 to 1918.

Q. Well, who is to pay that money to you, if it is ever paid?

A. If I felt sure of that I would be very much relieved, if I felt sure who was going to pay it. I do not know. It may be that we have a claim against the city or against the contractors. It is a matter about which there is a very grave doubt, I think, as to our ability to collect it. However it stands there still representing an amount either to be charged against our earnings or as a claim against the subway contractors, or against the city.

25415 Q. Have you made any effort to collect it?

A. Oh, decidedly, many efforts. It is against many contractors, as a matter of fact, it is not one contractor but a number of contractors.

Q. Have you sued?

A. I do not believe that proceedings have been instituted. They may have been started, without having been carried very far, other than perhaps to file papers.

Q. Your claim will be for that amount and interest?

A. I think we would be very glad to get the principal, or perhaps even something less than that, Mr Chambers. Anything that we get less than that will

25416 go over as an item to the expense during that period. You can take it and shift it yourself, if you like; it is six of one and half a dozen of the other, whether it appears in one statement or the other, as affecting our operations for the period from 1906 to 1918.

Q. When did you do that work?

A. During that period.

Q. During 1918, you mean?

A. No during the period covered by our statement of our earnings and of our investment.

The Master: We are on a question of working capital, aren't we?

The Witness: As an asset, yes, sir.

The Master: If this were charged off as an expense, it would not require that two hundred and some odd thousand dollars as working capital?

The Witness: Not as working capital. We would show a larger deficiency in our earnings and have a more substantial claim for going value based on efficiency and earnings.

Q. The 14th Street condemnation proceeding, these are items, you say, in the suspense account. I am speaking now of Exhibit 401, 14th Street condemna- 25418
tion proceeding, $13,481.91?

A. That is in the same category.

Q. As the Lexington Avenue Subway?

A. It is in the same category practically in this respect, that if we are unable to collect that in connection with the award, why, it becomes an expense. Until that is determined we have got to—

Q. (Interrupting.) Why haven't you collected that?

A. The proceedings are still pending, have not been concluded.

Q. With the city?

A. Yes.

Q. You claim interest on that from the city. 25419

Mr. Ransom: The money is still tied up. What has that got to do with it?

Q. Do you, Mr. Carter? You will, won't you?

A. We have not presented any claim.

Q. Haven't you?

A. As I said, in that regard, we would be glad to collect the principal, and that anything that we claim there, if interest were computed upon that, we would have to add it to this amount, now, instead of leaving it at the $13,481.91, it would have to be a larger amount.

Q. To be deducted from the amount you received on that property?

A. Deducted from the amount we received?

Q. Yes.

A. I think not.

Q. How about the 44th Street condemnation proceeding, $96,755.34?

A. Those proceedings have not been concluded yet. That is the expense incurred in connection with the condemnation proceedings and the proceedings before the commission which is to fix the award.

25421 Q. That amount you have here at 44th Street would be out of the amount, or taken out of the amount you received for the property, wouldn't it?

A. No. We are not going to receive an amount for the property that will cover that. Unless there is an extra allowance made by the appraisers, the commissioners, covering the expense of that suit, why, it is a charge against our expenses, not against the property at all on any theory.

Q. Well, they took your property?

A. They certainly did.

Q. And you are supposed to—

A. They are supposed to pay for it.

25422 Q. (Continuing.)—receive full compensation for it?

A. For the property, not for these expenses, unless they choose to make it. If they do, why, we won't have to charge that against our expenses, but if they do not make it, we certainly will charge it against the expenses, and that is where it belongs.

Q. Well, you deduct this expense—you will, won't you, from what you received from the property, so as to determine the net proceeds?

A. We will not.

Q. You should though, shouldn't you?

A. We should not. It has nothing to do with it.

Q. Haven't you done that in other cases?

A. We have not.

Q. Dismantling the West 44th Street Station. That comes in the condemnation proceeding. I mean you have dismantled your station because the city condemned the 44th Street Station?

A. Yes, that plant has been disused and put out of commission by reason of the taking of the property by the city. 25424

Q. What is that $4,989.37 for taking down the station building?

A. No, that is an expense—

Q. (Interrupting.) It says, "Dismantling of the Station"?

A. That is an expense in connection with dismantling some part of the equipment.

Q. Why didn't you put the station right on there and let them condemn it with it on it?

A. Why, they came in there with dredgers and knocked our plant all to pieces, Mr. Chambers.

Q. I know, but they paid for it. Why did you dismantle it? 25425

A. They have not paid anything for it. You are entirely mistaken and misinformed if you think they paid anything for it.

Q. For the 44th Street plant?

A. They have not paid a cent.

Q. They are going to?

A. Yes, they are going to pay some time.

Q. The award has been made?

A. No, it has not.

Q. Has not been made yet?

A. No.

Q. You haven't got it, but they will?

A. Make some award?

Q. Yes.

A. Oh, no doubt whatever.

Q. And should not dismantling the station be in that?

A. We shall claim all expenses, but I will leave you to form your opinion as to how much we are likely to recover from it.

Q. Oh, I think you get full compensation.

A. You do, do you?

25427 Mr. Ransom: I object to it as utterly immaterial. These moneys have to be provided for.

The Master: I think it is an outrage, the delay in such proceedings.

The Witness: I do, your Honor, a damned outrage, nothing else, and it costs us actual expenses in the end.

Q. Remodeling exhauster connections, 21st Street station, what is that, Mr. Carter?

A. It is an expenditure, the nature of which is such that it remains to be determined whether it shall be capitalized or put into an expense account, and there it stands for the present.

25428 Q. Shouldn't it be an operating expense?

A. That I am not able to determine. I think that ultimately it will go as capital expenditure.

Q. You don't know now, you haven't made up your mind?

A. Well, that would be the justification for carrying it in suspense.

Q. Now, the Peerless Range Patterns?

A. Those are assets of the company.

Q. What is that, a patent?

A. They are patterns of the Peerless Range, which is the standard range rented by the company to its consumers.

Q. That relates to appliances?

A. It does.

Q. What is this "Trial Installation, City Buildings"?

A. I think that that has to do with some trial heating installation. I am not familiar with the detail of it.

Q. The item of gas bill paper, what do you mean, that is for billheads?

A. Yes.

Q. What is that—I can't see why that is put into expense account? 25430

A. Well, it should be material and supplies, as a matter of fact, I fancy.

Q. Why isn't it an operating expense?

A. Why is it not? It will be when the bills are required.

Q. Why aren't they required?

A. They are not required at that time.

Q. Why?

A. It will be taken out of there when the material is used.

Q. Now, salary for H. B. McLean and stenographer, why isn't that an operating expense? Why are you carrying that in suspense account? 25431

A. I think that has already been carried this year to operating expenses?

Q. Well, then, it should have come out of here, if it has?

A. No, I think not. As affecting the operations for the period ending December 31, 1918, that item should be one place or the other in those statements. It should be either shown as an item of asset, or it should be shown in the suspense account. Now we can get it into the expenses, and it does appear there as an item of assets here.

Q. I understood you to say you had no street lamp work. How do you account for this item here, "City of New York Street Lamp Repairs, $13,202.28"?

A. It is a sum of money which the city owes us.

Q. From some time back?

A. From some time past, yes.

Q. How long back?

A. Oh, I don't know, three or four years, I guess.

Q. You have been carrying it ever since?

A. We have been carrying it. It is a perfectly good claim against the city, and we expect to collect it.

25433 Q. And why don't you?

A. For the simple reason, and the same reason that we do not collect our award, Mr. Chambers, because the city does not pay until it has to.

Q. Four or five years old, isn't it?

Mr. O'Brien: You get your interest, don't you, Mr. Carter?

The Master: Don't answer that.

Q. You will have interest, won't you, if it is a just claim?

A. Not necessarily.

Mr. O'Brien: More than you are getting on a whole lot of your investments.

25434 The Witness: If we get anything—

The Master: Don't answer that, Mr. Carter. You can answer Mr. Chambers' question.

Q. Yes, you would, if it is a just claim and liquidated you would get interest on it?

A. Possibly. Not necessarily. The city is not liberal in the matter of allowing interest on claims. They often demand as a consideration for the settlement of the claim, the waiver of interest. That is done repeatedly.

Q. But whether you—the way you talk one would think you did not get your just dues from the city?

Mr. Ransom: And the Attorney General?

A. We do not.

Q. Now, contractors and individuals for labor and materials furnished, what is that? Does some of that relate to contractors who rendered work, to whom you owe money?

A. No.

Q. Or who owe money to you, I mean? For what class of work did that apply?

A. Yes, who owed us money. Work that we had done for contractors engaged in either subway or city operations in the streets involving a disturbance 25436
of our distributing system.

Q. And some of it may be work that you have done for contractors for the other companies, on work of the other companies?

A. No, that would be billed to them and they would have the claim against the contractor.

The Master: This question of working capital is a matter of judgment, is it?

The Witness: It has to be, your Honor, because if we took all the cash we had to use, at times we would be claiming four or five or six million dollars. I have known the city gas bills alone to run up to three million dollars. 25437

The Master: Well, you don't have that at the present time?

The Witness: We do not have it at the present time, but I say at various times the requirements are likely to change. I think that at the present time this is a conservative provision for that particular requirement.

The Master: But I say it is a matter of judgment.

The Witness: It is a matter of judgment, yes, sir.

The Master: Some other man might have a different opinion about it.

Mr. Ransom: On these items charged, the money is tied up here and at least to that extent there cannot be any doubt about it.

The Master: I don't know about that. I don't know whether you are entitled to have some hundred odd thousand dollars for possible claims against the city or the contractors on the Lexington Avenue subway.

Mr. Ransom: You have the money tied up
25439 anyway.

The Master: Charge it to the expense.

Mr. Ransom: There comes a time when you can do that. The company would much prefer it.

The Master: I am disposed against you on that item and one or two others.

Mr. Chambers: I am substantially through with the exception that I want to offer some pages of this minute book in evidence. That will only take a minute, but I want to make sure just what pages they are.

The Master: All right. Proceed, Mr. O'Brien.

25440 Cross-examination by Mr. O'Brien:

Q. Mr. Carter, when did you enter the employ of the company?

A. The Consolidated?

The Master: The question is not allowed; it has already been answered.

Q. You began as an office boy?

The Master: Not allowed—already answered.

Q. At the time of the consolidation what was your particular title?

The Master: I think that has been answered, but I will let him answer it again. He said he was a clerk.

A. At the time of the consolidation I was a clerk; I had no title other than that.

Q. In the Bookkeeping Department?

A. Yes.

Q. How old were you then?

The Master: Not allowed.

Mr. O'Brien: Your Honor, the complainant's counsel has asked a number of questions of the witness with respect to that period in 1884.

The Master: I don't think Mr. Carter's age cuts any figure in this case at all, it doesn't make any difference how old he was or how old he 25442
is.

Mr. O'Brien: His memory has been tested here, and I would like to test it further.

The Master: No, I won't allow any questions testing memories.

Mr. O'Brien: You will not allow any questions testing memory?

The Master: No.

Mr. O'Brien: I except now to your general ruling, as I will except to rulings on special questions on that matter. My belief is that a great deal has been asked of this witness with regard to the period around 1905 to 1906, and earlier pe- 25443
riods back to 1884.

Q. When did you first become an officer of this company?

The Master: Not allowed; he has already stated.

Q. What particular branch of the accounting of the company is done in the office under you, the secretary's office?

A. The general accounting and statistical work.

Q. You understand, I mean apart from the Accounting Department?

A. The Accounting Department is one of my departments.

Q. You have heard the testimony of witnesses in this case, all of the witnesses, in fact, have you not?

A. Most of them, I think.

Q. You have been present in court on every day since we began the trial on July 22nd?

A. I think not.

Q. With a few exceptions?

A. With a few exceptions.

Q. Those were the days when the company had
25445 board meetings?

A. Not in every case.

Q. And you have followed the record?

A. Pretty closely.

Q. You have advised with counsel for the complainant during the progress of the trial?

A. Yes.

Q. And you are fairly well acquainted with the testimony of the witnesses so far?

A. Fairly.

Q. You have talked with them after hours, after court hours, I mean, concerning their testimony of the day?

25446 A. I have not as a rule, sometimes.

Q. You heard Mr. Woods' statement that he rode uptown with you and you discussed his testimony?

A. I don't think I was present when he testified to that; I think I read that.

Q. It is a fact that you and he discussed the testimony that he was giving while he was on the stand, at times, out of court hours?

A. Discussed the testimony that he had given?

Q. That he had given?

A. I don't recall anything particular about it.

Q. I am asking you about the fact, not about the particulars, just now.

A. I should think it quite likely that he would have referred to what he testified to.

Q. You saw his exhibits before they were presented in court?

A. Some of them.

Q. You saw the exhibit that he presented setting forth the hypothetical figures for making gas reduced to cents per thousand cubic feet?

Mr. Ransom: I object to that on the ground that there was no exhibit. 25448

The Master: Objection sustained upon the ground that the figures were not hypothetical.

Mr. Ransom: And there was no exhibit. It was testimony, not an exhibit.

Mr. O'Brien: Well, it is expedition you want, isn't it, Judge Ransom?

The Master: Whether it was an exhibit, or whether it was figures given by the witness, they were not hypothetical. They were figures which he stated represented actual requirements for material and expense in making gas, based upon his experience and knowledge, that that is what it required. Mr. Woods said, based on his expe- 25449
rience, and was prepared to swear, that to make gas required so much oil, required so much coal, required so much labor, and so much repairs. It was not hypothetical at all. It was an absolute fact that he testified to.

Mr. Chambers: It was opinion.

Mr. O'Brien: Well, I will refer to that when we sum up, your Honor. It was not a specific plant—

The Master: No.

Mr. O'Brien: It was not the actual cost of any of the complainant's stations.

The Master: Next question. You said you were going to argue it later on.

Q. You recall the exhibits I have in mind when I refer to these figures that the Court has just mentioned, the coal gas figures and the water gas figures, representing the cents per thousand cubic feet?

Mr. Ransom: I object to that. There was no such exhibit.

Mr. O'Brien: Well, I ask for the original ex-
25451 hibit.

Mr. Ransom: There isn't any.

Mr. O'Brien: I ask for all the original exhibits that were submitted while Woods was on the stand.

The Master: You have had copies of them all.

Mr. Ransom: There was a statement which in a summary form gave Mr. Woods' figures. That was not received in evidence as an exhibit. For the convenience of counsel on cross-examination I gave them a copy of it.

The Master: I recall the fact.

25452 Mr. O'Brien: Please hand me the exhibits which you used with Mr. Carter yesterday when he was on the stand, the original exhibits.

Mr. Ransom: Which one?

Mr. O'Brien: Both of them.

The Master: Those were Teele exhibits.

Mr. Chambers: 364 is one of them.

Q. While Judge Ransom is getting the exhibits, Mr. Carter, you were served with a subpoena last evening?

A. Yes, sir.

Q. I hand you this paper and ask you if you were served with that?

A. Yes, sir.

Q. At what time?

A. I think about six o'clock.

Q. Was any fee handed to you at the same time?

A. Yes, sir.

Q. Have you produced the papers and records referred to in that subpoena *duces tecum?*

A. I believe the original data relating to the gas transferred is here. Judge Ransom, I might say, was present directly after this was received, and acting on his advice the papers I have just alluded to were brought to the hearing this morning. The minute books of the executive committee have not been produced. The stock books are sixteen in number—

Mr. Ransom: Seventeen.

A. (Continued.) Seventeen in number, and it was thought that out of the seventeen you might select what you might care to see. They are all in alphabetical order, the names all run through those sixteen books in alphabetical order, and they can be brought down here on fifteen minutes' notice, any particular one or two or three of the seventeen that you might care to see.

Q. Well, the fact is, you have not produced them?

A. They are not here at the moment.

Q. Have you produced the other data, minute books?

A. The minute books of the executive committee I have not produced.

Q. Why not?

A. I have been so advised by counsel not to do so.

Mr. O'Brien: I ask that this subpoena be spread upon the minutes.

(The subpoena reads as follows):

The President of the United States of America, to Consolidated Gas Company of New York—Robert (L. S.) A. Carter, Secretary and Vice-President, 130 East 15th Street, City of New York, Borough of Manhattan, State of New York, GREETING:

We command you, that all business and excuses laid aside you appear and attend before the Honorable Abraham S. Gilbert, a special master, duly appointed in the cause hereinafter named, sitting in
25457 Room 401, of the Post Office Building on Park Row, City of New York, Borough of Manhattan, on the 11th day of December, 1919, at 9:15 o'clock, in the forenoon, to testify and give evidence in a certain action now pending undetermined in the District Court of the United States for the Southern District of New York, between the Consolidated Gas Company and the City of New York, complainant, against Charles D. Newton, Attorney General of the State of New York and others, defendants on the part of the said plaintiffs and that you bring with you and produce at the time and place aforesaid, certain documents prescribed as follows, to wit:

25458 "(1) The stock book, showing stockholders and amounts of stock held by them at the date of declaration of last dividend.

"(2) All papers, records and books referring to or containing the data of transferred gas.

"(3) Minute books of executive committee for 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919. Recording discussions, reports and resolutions relating to all contracts for coal, oil, pipe and other supplies, and also relating to relations of any kind with the New York Edison Company and United Electric Light & Power Com-

pany, now in your custody and all other deeds, evidences and writings, which you have in your custody or power concerning the premises. And for failure to attend you will be deemed guilty of a contempt of court, and liable to pay all loss and damages sustained thereby to the party aggrieved, and forfeit Two hundred and fifty dollars in addition thereto.

Witness, the Hon. Learned Hand, Judge of the District Court of the United States for the Southern District of New York, at the Borough of Manhattan, City of New York, the 10th day of December, 1919.

ALEX GILCHRIST, Jr., 25460
Clerk.

William P. Burr,
Attorney for Edward Swann
as District Attorney of the County of New York.

Q. What counsel was it who so advised you?

A. Judge Ransom.

Mr. O'Brien: Your Honor, I ask an adjournment of the cross-examination of the witness until these papers have been produced.

The Master: You will proceed with the cross-examination on gas transferred. The data is here. If your examination is concluded before one o'clock I shall adjourn then until tomorrow 25461
until the other papers arrive.

Mr. Ransom: Is it your Honor's view that this subpoena is valid?

The Master: Yes.

Mr. Ransom: I think there is very grave doubt of that, to put it mildly.

The Master: Why?

Mr. Ransom: Under the Federal rules, as I understand them, the clerk has power to issue a subpoena. The clerk has not the power to issue a subpoena *duces tecum*. This is a subpoena *duces*

*tecum*. No subpoena *duces tecum* has been issued by the Master. The rule vests in you the power to direct and require the production of any books or papers such as may be in your judgment required for the purposes of this case.

The Master: I think the clerk has the power to issue subpoenas *duces tecum*, and I will direct the witness to produce the papers required by that subpoena.

Mr. Ransom: We except to your Honor's ruling, both as to your construction of the powers
25463 of the clerk, and as to the production of these papers. The direction given by yourself will be complied with, subject to our exception in that respect.

The Master: Go ahead with the gas transferred.

Mr. O'Brien: There are some other matters I want to take up first.

Mr. Ransom: I also further make the point that so far as the minute books are concerned this provision here is altogether vague and indefinite. It is a broad and roving direction about a subject which he apparently knows nothing
25464 about. On this matter of gas transferred the reason we have brought these records of gas transferred is because we have continuously had the records of gas transferred in this court.

The Master: I shall rule with reference to Item 3 in the subpoena that it was not necessary for counsel to specify the matter covered by the minutes that he wanted to refer to. He can subpoena all the executive committee minute books down here if he wants to, and I shall see what happens.

Mr. Ransom: I note an exception to your Honor's ruling in that respect. So far as coal and oil are concerned, there was furnished to Mr. O'Brien, in pursuance of his request and your Honor's direction, some months ago, a certified copy of all matters in the minutes with relation to those two subjects.

Mr. O'Brien: Now, Judge—

The Master: Mr. O'Brien, I will ask you to go on with your examination.

Mr. O'Brien: He has made a statement here, some months ago. I state to your Honor that 25466
that is not the fact.

The Master: All right, you have stated it; now go ahead.

Mr. O'Brien: I asked for some exhibits here, Judge.

Mr. Ransom: The original exhibits of yesterday are there.

Mr. O'Brien: Do not waste time.

The Master: You asked Mr. Carter about some figures of commercial expense and other items that I refused to let Mr. Woods testify to.

Mr. Chambers: Exhibit 364 and—

Mr. O'Brien: Exhibits 364 and 365. 25467

The Master: Let me see them and I will see if they are the ones I have in mind. He said it cost about 7 cents for a certain item and 6 1/2 for something else.

Mr. O'Brien: I want the exhibits that were marked for identification.

The Master: Yes, that is it.

Mr. O'Brien: The Woods' figures.

The Master: No, this is the one that he was asked about, what were the commercial expenses. This is the paper.

Q. You saw the papers that were presented at the time that Mr. Woods was on the stand, in which he reduced what he thought were the fair costs of making coal gas in one instance and water gas in the other to cents per thousand cubic feet?

The Master: Do you remember that tabulation, Mr. Carter?

The Witness: I remember that he presented a tabulation that was marked, I think, for identification, your Honor.

Mr. Ransom: I have copies of the two that
25469 were marked for identification.

Mr. O'Brien: You know what I have in mind, Judge Ransom. What is the use of wasting the time of the Court here. I will give you expedition while Mr. Carter is on the stand, if you want it, but you know what I want and there is no use sparring around.

Mr. Ransom: I am not sparring around.

Mr. O'Brien: I want those papers.

Mr. Ransom: They are not in evidence.

Mr. O'Brien: It does not affect my questions of Mr. Carter whether they are in evidence or not.

25470 Mr. Chambers: He testified to them as an ananswer. He shoved them out here as his answer.

Mr. Ransom: They were for the information of the defendants, and they were not used yesterday.

The Master: You cannot have it.

Mr. O'Brien: I cannot have it?

The Master: Not just yet. Ask your question.

Mr. O'Brien: I want to ask the witness about them.

The Master: Ask the question without them. Or put it this way: You call for the production of Exhibits 364 and 365 for identification?

Mr. O'Brien: I do.

The Master: I will hand them to you, but if you cross-examine the witness about them I shall on the application of counsel for the complainant mark them in evidence.

Mr. Chambers: No, those are all in.

Mr. Ransom: They are not in evidence.

The Master: They are marked for identification. 25472

Mr. Chambers: Your Honor held that he must give them to us, as I remember, or copies of them, and he was asked if he would make those answers to those questions, and they were passed around.

Mr. Ransom: No.

Mr. Chambers: Yes. Now, I know. Woods was on the stand, and Mr. Woods was asked if those would be his answers.

The Master: Whatever the fact may be, Woods testified to all of the items except cost of distribution, renewals and replacements—no, I think he covered renewals and replacements 25473 and taxes. Two items I refused to let him testify to.

Mr. Ransom: The three items: commercial expense, miscellaneous general expenses and taxes.

Mr. O'Brien: Your Honor, there is time being wasted here. They are misconstruing what my purpose is in asking for them, and I will clear that up by asking the questions.

The Master: My understanding is that I let Mr. Woods testify to all these figures, whether this was in evidence or not.

Mr. Chambers: Except as to the prices.

The Master: Except as to the taxes, cost of distribution and one other item. I think I finally let him testify about renewals and replacements.

Mr. Clark: He was not allowed to testify as to prices.

The Master: To what?

Mr. Clark: To prices.

The Master: What prices?

Mr. Clark: In the last column. You said you would not take his testimony on that.

25475 Mr. Chambers: That is right, everything except the prices in the last column, as I remember it.

Mr. Clark: He gave his testimony on the amounts, but not as to prices.

The Master: I think I took his testimony about labor.

Mr. Ransom: Yes.

The Master: I must have.

Mr. Chambers: You let him testify to the amount of coal and the amount of coke.

Mr. Clark: And the amount of residuals, but not the prices.

25476 Mr. Chambers: The amount of residuals, but you would not let him testify to the prices.

Mr. Ransom: You let him take those prices. You said you would not—

The Master: I do not see that it can do any harm to let Mr. O'Brien use this copy marked for identification, without penalty.

Mr. Chambers: We have all had copies of it.

Mr. Ransom: Exception.

Mr. O'Brien: What did you say about without penalty, your Honor?

The Master: I said without penalty.

Mr. Ransom: But if he cross-examines him on those figures—

The Master: It is simply a memorandum on what the witness testifies to.

Mr. Ransom: But if he cross-examines him about the Woods figures that were not received by your Honor, about taxes, miscellaneous general expenses—

The Master: Then he is making him his own witness.

Mr Ransom: And commercial expenses.

Mr. Chambers: I understood the Court asked 25478
him about those yesterday.

Mr. Ransom: Not as to the Woods figures.

The Master: Proceed, Mr. O'Brien:

Mr. O'Brien: After this great amount of labor for about ten minutes, your Honor, I will proceed with a few questions they have not had in mind at all.

The Master: Go ahead, and if you want to use these you may do so.

Q. Mr. Carter, you have in mind what I referred to when I asked you about the testimony of the witness Woods?

A. Yes. 25479

Q. Now, I will ask you did you have any conversations at all, of any kind or nature, with Mr. Woods, before he went on the stand and testified?

The Master: About those figures?

Mr. O'Brien: About those figures.

A. I think not. About the figures that he testified about I think I had no conversation with him.

Q Did he discuss with you his testimony?

Mr. Ransom: Before or after he gave that?

The Master: He has already said he did not discuss it before.

A. I think he discussed it after he had testified. I think he talked with me about it.

Q. You mean each evening?

A. Each evening? No, I have not any time to devote to discussing testimony that has already been given—very little time.

Q. Mr. Carter, you read his testimony where he said he went over this matter with you?

Mr. Ransom: I object to the question. He did not say that. The record shows what he said.

25481 A. He said that he discussed his testimony, going from here to the office with me.

The Master: My recollection, Mr. Carter, is that the witness testified, one evening after he left here you and he had a talk about the purposes and intentions of the Company in starting the Astoria plant as to what the plans were intended to cover? Do you recall that?

The Witness: I do not recall it. It is quite likely that I would talk to him, but it made no impression on my mind at the time—not enough for me to recall it at the moment.

Q. Mr. Carter, you discussed during recess and
25482 many, many days while Mr. Wood was on the stand the matters in connection with his testimony in this case, did you not?

A. During recess?

Q. During recess?

A. I do not recall it.

Q. Were Mr. Teele's exhibits, the exhibits in this case offered in evidence while Mr. Teele was on the stand, submitted to you before they were offered in evidence?

A. Why, no. They were made up from the books and recited the facts as recorded in the books.

Q. Did he not go over those matters with you and present to you those exhibits before they were offered in evidence in this case?

A. Are you referring to this Exhibit 364, or whatever it is?

Q. I am referring to all or any of these exhibits presented by Mr. Teele.

A. I do not think I went over the exhibits that you are referring to at all before they were presented.

Q. You say you did not go over any of them?

A. If you refer, for example, to Mr. Teele's statement of revenue and expenses— 25484

Q. I am referring to all of his exhibits, the many exhibits?

A. When he had completed it he sent me a copy of it.

Q. Did you discuss with Mr. Teele any of the exhibits that were offered in evidence while he was on the stand, before they were offered in evidence, either in court or out of court.

A I would not say the exhibit on some particular matter that he was considering. He probably spoke to me about some particular matter—asked for my information, as to what I knew about it.

Q. How frequently? 25485

A. Not frequently; infrequently. It would be something that he simply wanted the benefit of my knowledge in respect to.

Q. Did you approve of these exhibits before they were offered in evidence?

A. I did not approve or disapprove of them. When they were completed I would see them.

Q. Did you see them before they were offered in evidence?

A. I have stated that when Mr. Teele completed an exhibit a copy of it was sent to my office.

Q. In each case, as to each exhibit?

A. In each case.

Q. And you had a chance to inspect it?

A. I had a chance to, but I had not much time to.

Q. Well, did you? Did you go over them and review them?

A. No.

Q. Who were the men in your office—I am speaking now about your office of secretary, which was referred to many times in the testimony of the witnesses for the complainant—how many men did you
25487 assign to Mr. Teele to help him get up the exhibits?

A. I assigned only one man to assist Mr. Teele, but not to get up exhibits at all, simply to facilitate his obtaining from the Accounting Department such books and such records as he required.

Q. And that was who?

A. Mr. Davidson.

Q. What was the work that Mr. Carter, Jr., and the two other gentlemen did in connection with the accounts? You have read the testimony?

A. Mr. Carter, Jr., has nothing to do with the accounts whatever. He has to do with the statistical data which is kept in the Manufacturing Department.

25488 Q. You mean the gas production statistics that have been referred to in the testimony in this case?

A. Gas manufacturing statistics are on file in the department with which he is connected.

Q. And he has charge of that?

A. Under Mr. Woods he has.

Q. And does he compile that data?

A. I think he has made no compilations of that data. I think perhaps the most he has done has been to direct the furnishing of books and records of that department as they were required by Mr. Teele for his purposes. Mr. Teele's statements were made from

the books, not from anybody's opinions or anybody's advice.

Mr. O'Brien: I move to strike that out, your Honor.

The Master: I will allow it to stand.

Mr. O'Brien: I have not asked him any question about that.

Q. How many conferences have you had with Mr. Teele concerning his work in this case since he first began work?

A. Probably a great many. Most of them intended to accelerate the work. 25490

Q. Well, that will do. You had a great many: about how many?

A. If you will qualify your question—

Q. (Interposing.) Would you say three or four a day, since he has been engaged on the work?

A. Oh, my, no.

Q. What suggestions did you make to him as to changes in the exhibits?

A. I do not think I made any.

Q. Did you give him directions as to what accounts he was to include in the gas making figures in this case and what accounts he was to exclude as not relating to the gas industry? 25491

A. He would not have accepted any such directions from me.

Q. I say, did you give him any such directions?

A. I did not, and I am also telling you that he would not have accepted them if I had given him such directions.

Q. Is it your idea that he could go to the books and determine for himself as an accountant which accounts relate strictly speaking to the gas making industry and which accounts were extraneous to it?

A. If there was any doubt in his mind he might ask me about it, and I would state the fact to him.

Q. I am asking you how often that took place?

A. I have already stated that it was infrequent.

Q. You said you had a great many conversations or conferences with him?

A. I have not made any such statement.

Q. Well, I will ask you to state about how many?

A. During the year that he has been—or pretty nearly a year—I may have seen him or may have gone into the room where his people were working three of four times a week to find out the progress of the work.

25493 Q. Mr. Davidson reported to you about it, didn't he?

A. To urge its acceleration. That was my principal interest in the work, that Mr. Teele was doing and the work that his staff were doing, to accelerate it.

Q. Mr. Davidson was representing you in connection with all this work?

A. I required no representation there. Mr. Teele required some assistance.

Q. Don't volunteer these answers, Mr. Carter. Just answer my questions and we will run along expeditiously.

25494 A. He did not represent me any more than he represented every other officer of the company.

Q. You selected him, did you not, to assist?

A. I directed him to.

Q. You directed him to assist Mr. Teele in his work?

A. Not at all. I directed him to facilitate Mr. Teele's obtaining from the Accounting Department and the company's files any books or records or vouchers that he required for the purpose of carrying out his instructions.

Q. What tabulations and what calculations did Mr. Davidson make for Mr. Teele?

A. I do not know.

The Master: Do you know of any that he made?

The Witness: I think that he probably helped. Being in the room and being in the department with Mr. Teele, I have no doubt that he probably helped him under Mr. Teele's direction then, and not under mine. Mr. Davidson's directions also were to furnish to the defendants' representatives there such books and records and 25496
vouchers as they required in order to make such checks or tabulations of the company's work as they desired to make or the company's records, rather.

Q. Now, Mr. Carter, Mr. Davidson was the representative of the company so far as getting the books for the defendants is concerned? He was the man assigned to get them the papers that they wanted?

A. I have told you that.

Q. And that you wanted to give them?

A. I have told you that and I won't qualify it any other way.

Mr. Ransom: May the record show the— 25497

Q. Was there anybody else assigned to that particular work of getting out the books, such books as might be requested by the defendants and their representatives, at the offices of the company?

A. Mr. Brundage, I think, was requested by me to facilitate in every possible way the production for Mr. Teele and for the representatives of the defendants, the company's books and records.

The Master: Just one minute. You wanted to note the production of what, Mr. Ransom?

25498 Robert A. Carter, Cross.

Mr. Ransom: The stock books are here, the minute books are on the way, subject to your Honor's direction.

The Master: I did not think you would bring them down today. I did not see how you would need them this morning.

Mr. O'Brien: I might say for the convenience of everybody that the items I have in mind now will take until one o'clock, and we won't get into them.

Mr Ransom: They are here. And I also beg
25499 to say on that, with this coming stockholders' meeting and this very serious matter of refinancing problem ahead, these stock books are produced at the greatest injury to the work of the company, they being used night and day getting ready for this stockholders' meeting.

The Master: All right. I will direct you, Mr. O'Brien to get at these stock books and anything you want to cross-examine on them now. The stock books being in court, I shall ask you to announce or state what you want so that the witness can produce it and testify with reference to it.

25500 Mr. O'Brien: They better open the bags hadn't they, your Honor?

The Master: State what you want.

Mr. O'Brien: I want to put in the record here the names of the stockholders and the amounts of stock they have got.

The Master: I won't permit it. It is an interminable job.

Mr. O'Brien: I am going to offer them as exhibits.

The Master: You can mark them as exhibits if you want to. Get the books and just mark

them as exhibits, and give Mr. O'Brien the first book. What book is it?

Mr. O'Brien: We might have them in order, your Honor. This is No. 8.

The Master: Let us have No. 1. What do you offer in evidence, the stock ledger of the company, is it called?

The Witness: This is the stock ledger, yes, sir.

The Master: Stock Ledgers, Volume No. 1, 2, 3, 4, 5, 6, 7, 8,—the stock ledger of the company consisting of 17 volumes, Nos. 1 to 117, in- 25502
clusive.

Mr. Ransom: Are these documents offered in evidence?

The Master: Yes.

Mr. Ransom: The complainant objects earnestly and emphatically to putting in evidence all these bulky documents with the names of all these stockholders spread on the record. They are in no way material to any issue in this case; they have no bearing upon any issue; no issue is indicated; no purpose has been expressed by counsel for the defendant, Edward Swann; the only effect would be to needlessly cumber the record 25503
and to place upon this record a great prodigious list of names and of stockholdings which can have no possible bearing on any issue in this suit.

The Master: How are these books of any importance in this record?

Mr. O'Brien: They are important in very many ways, your Honor.

The Master: Tell me one.

Mr. O'Brien: They are perfectly proper at this time, because yesterday—

25504 

The Master: I want to know one reason for having these books in the record.

Mr. O'Brien: One reason is to determine the number of shares of stock held by various people that are connected with the company.

The Master: Who?

Mr. O'Brien: Everybody connected with the company and the affiliated companies. There was an effort made yesterday to summarize in various ways the stockholders in this company, to show what counsel saw fit to do. He had his
25505 own purpose when he brought that out with the witness Carter.

Mr. Ransom: To show the number of them?

Mr. O'Brien: Yes.

Mr. Ransom: And the very number of them is the reason why they should not be spread on the minutes.

Mr. O'Brien: He is very solicitous about the cumulative record, your Honor. We have had voluminous books brought in here, and they were not necessary to this case, and I am offering them in evidence, and then I am going to ask the witness about the various things in them.

25506 The Master: You can ask the witness about the various things in them without taking them in evidence. I will reserve decision on the offer just now. You ask the witness about the various things in them.

Q. Mr. Carter, will you take the stock books and tell us how many shares of stock in the Consolidated Company are held by Mr. William Rockefeller?

Mr. Ransom: Objected to as immaterial and incompetent, a mere effort to drag wholly extraneous facts into this case, and has nothing to do with the rights of this company. Mr. William

Rockefeller might hold every share of stock in this company and it would not affect this company's rights in the courts of record. If the time has come when a public official can endeavor to create a mere class prejudice by raising an issue of a name in a case—

The Master: Where is he going to create that issue of prejudice?

Mr. Ransom: If it has any other purpose, it is certainly immaterial.

The Master: Let us have it.

Mr. Ransom: Exception. 25508

The Master: I think personally all of the stock books of public utility corporations ought to be public records.

Mr. Ransom: Well, they are.

The Master: Then let us have them. It won't do any harm. Mr. William Rockefeller has how many shares of stock, Mr. Carter?

The Witness: 90 shares.

Q. How many shares has Mr. William Rockefeller, Junior?

A. Not any.

Q. How many shares has Percy Rockefeller?

A. Not any. 25509

Mr. Ransom: This is all over my objection and exception, very strenuously.

The Master: Yes, sir.

Q. Are you sure of that, Mr. Carter?

A. Yes, because I can see from the alphabetical order, Mr. O'Brien, that those names are not here.

Mr. O'Brien: Your Honor, you have held in abeyance your ruling. I would like to look at the book.

The Master: No. Ask your questions.

Mr. O'Brien: So that I would like to have you pass on that matter now.

The Master: No, ask your questions.

Q. How many shares has John D. Rockefeller in the company?

A. There is no stock standing in the name of John D. Rockefeller.

Q. Is there any stock held for him by somebody else?

A. I don't know.

Q. Never heard that there was?

Mr. Ransom: I object to it as incompetent and improper.

25511 The Master: I will allow it.

Mr. Ransom: What he heard?

The Master: Yes, I will allow it.

Mr. Ransom: Going far into the realm of hearsay.

A. Yes, I have heard that stock is held in other names. I have no knowledge on the subject. I do not know whether it is true or not.

Mr. Ransom: Nothing the company has anything to do with.

The Master: Don't interrupt.

Mr. Ransom: Well, I think it is a very improper proceeding which is being perpetrated by

25512 these supposed public authorities.

The Master: You have already made that claim. Now, let us get along. Go on, Mr. O'Brien.

Q. Do you know whether William Rockefeller has any other shares in the company, through proxies or assignees or agents?

Mr. Ransom: Objected to as immaterial, incompetent and improper, as a mere scandal-mongering expedition.

The Master: I will take it.

A. I do not know.

Q. Do you know whether he ever did have?

A. I don't know.

Q. Do all the communications in regard to transfers of stock come to you in the course of the company's business?

A. Personally?

Q. Yes.

A. They do not.

Q. Do they come to your department?

A. They come to the transfer department, which is under me.

Q. Which is under you? 25514

A. Under my jurisdiction.

Q. And the men under you would know if there was correspondence with Mr. Rockefeller, or if there was a direction made by Mr. Rockefeller to transfer stock to some other name—someone under you would know it, wouldn't they?

A. If there were any such directions given.

Q. Yes, some one under you would know it?

A. Certainly.

Q. You have correspondence, you think, with reference to the transfers of stocks?

A. Very little correspondence on the subject of transfers of stock. Stock transferring is not done by 25515
correspondence. It is done by the surrender of a certificate properly endorsed with the request that a certificate in some other name be issued in place of it.

The Master: How about the stamp?

The Witness: Well, it comes stamped always, your Honor.

Q. Will you say that you have never received any information with reference to the transferring of stock or the placing of it in the name of somebody in the stock book records in behalf of Mr. William Rockefeller?

Mr. Ransom: Objected to as incompetent and immaterial, outside the issues in the case, highly improper.

The Master: I will allow it.

Mr. Ransom: Exception.

A. I may have been told that in somebody's opinion some stock held in somebody's name was owned by Mr. Rockefeller.

Q. When were you told that, if you were told it?

Mr. Ransom: Objected to as an outrageous
25517 attempt—

The Master: That is as far as I will let you go on that.

Q. Did Mr. Rockefeller ever tell you that he was arranging transfer of stock into the names of other people?

Mr. Ransom: Objected to.

Q. Did he ever discuss it with you?

The Master: I will allow it.

Mr. Ransom: Exception.

A. Never.

Q. Did any officer of the company ever discuss with you the holdings of Mr. Rockefeller in his own
25518 name, or in the name of some other person, of stock in this company?

Mr. Ransom: Objected to.

The Master: Overruled.

Mr. Ransom: Exception.

A. Never. In that connection I find that this balance is as of October, 1910, I think.

The Master: Whose balance?

The Witness: In the name of William Rockefeller, 90 shares. Perhaps you can take that to the light and get me that date, Mr. Ransom. But in other words, that account has not been changed in any way, manner or shape since that date.

25519

Mr. Ransom: August 17, 1910, I think.

The Witness: No stock has been transferred into it or out of it.

Q. These books that have been produced in court, these stock books, cover the holdings of what period?

Mr. Ransom: Cover all the period.

A. I can give you some impression, perhaps. I find the date 1912 here, that date, and the other was 1910.

Q. These are loose-leaf books?

A. Well, not exactly. They are locked, although I presume they would be—

25520

The Master: They are what are called loose-leaf?

The Witness: They are what are classed as loose-leaf ledgers. I find the date 1911 and 1910, and from the fact that those balances that were brought forward in 1910 are the only ones that are stamped with a hand stamp, rubber hand stamp, I should say that this particular record began in 1910, and that every transaction affecting any account that now is open in these books is right here for that period from 1910.

Mr. Ransom: That is all occasions. Some have been balanced as of August 17, 1910, and subsequent entries are in handwriting.

25521

The Witness: That would have been the time of the September dividends, as of that year.

Q. Do you recall the name that was mentioned, or names, in connection with the holdings through proxy, or agent, of Mr. John D. Rockefeller?

Mr. Ransom: Objected to.

The Master: Overruled.

Mr. Ransom: Exception.

The Witness: No.

Q. Can you tell us how many shares of stock are held by Mr. C. M. Higgins?

Mr. Ransom: I object to the question as incompetent and immaterial, just a part of a policy of dragging improper issued and supposed prejudices held by the cross-examiner against certain personalities, into this case.

The Master: I will allow this question.

Mr. Ransom: Exception.

A. I find C. M. Higgins a holder of 500 shares of stock.

Q. Is his address given?

A. No, it is not given in this book.

25523 Q. Do you know who that Charles M. Higgins, or C. M. Higgins is?

A. I do not know.

Q. Is it given as Charles or just C. M. Higgins?

A. C. M. Higgins.

Q. Where are the addresses of the stockholders kept?

A. We have an address book.

Q. You can refer to the address book and give us his address?

A. Yes, I can find his address.

Q. Will you kindly produce that when you are next on the stand?

25524 A. The address of C. M. Higgins?

Q. Yes.

A. I will do so.

Mr. Ransom: I object to that. The whole thing is perfectly preposterous and ridiculous.

The Master: I am going to let it go to the point where it will show that fact on the record, then I will stop it.

Mr. O'Brien: Your Honor, I propose to bring out the holdings of the principal men in this company and the companies that are doing business with the complainant in this case.

The Master: Well, go ahead.

Mr. O'Brien: I did not know but what your remark carried with it the inference—

The Master: That it is ridiculous.

Mr. O'Brien: Yes.

The Master: What else do you want? I think it is.

Q. Now, Mr. Bedford?

A. What initials?

Q. Any Bedfords that are in this book?

A. You want all of the Bedfords?

Q. Yes. 25526

Mr. Ransom: This is over my objection and exception.

A. I find Edwin R. Bedford, a holder as of August 17, 1910, of ten shares of stock. It has not been changed since that time.

Q. Turn to Mr. Brady, Nicholas F. and James C.?

A. I find the name of N. F. Brady here with 2,000 shares.

Q. James C. Brady?

A. James C. Brady holds 100 shares, the same as in 1910.

Q. Do you know, Mr. Carter, whether stock is held 25527 by either Nicholas F. Brady or James C. Brady through somebody else?

A. I do not.

Q. Have you ever heard that?

Mr. Ransom: I object to that as highly incompetent.

The Master: Objection sustained.

Mr. O'Brien: Exception.

Q. Did Mr. Brady ever discuss the matter with you?

Mr. Ransom: Objected to.

The Master: I will allow that.

A. No, he never did.

The Master: Next name.

Q. Have you got the B's there?

A. Yes, sir.

Q. Stay in the B's awhile?

Mr. Ransom: You mean the Bushes?

Q. Mr. George F. Baker, and George F. Baker, Jr.?

Mr. Ransom: I object to this.

The Master: I am going to take this inquiry under your general objection.

25529 Mr. Ransom: It is a perfectly outrageous proceeding, dragging in a lot of men merely because the learned District Attorney thinks that some prejudice might be created by their holding stock in this company.

The Master: Well, he wants to base his argument that there is affiliation between the coal companies, and the Standard Oil Company, and the Consolidated.

A. George F. Baker holds 100 shares.

Q. George F. Baker, Jr.?

A. He doesn't hold any.

Q. Now, Mr. Berwind?

25530 Mr. Ransom: Do you mean E. J., or what Berwind do you mean?

The Master: Is that the name of the director?

The Witness: He is not a director of our company. Do you mean John C. Berwind?

Q. Give us that, too. How many has John E. Berwind?

A. He has 500 shares which he had held since 1912.

Q. There is no E. J. Berwind?

A. No.

Q. James A. Stillman?

The Master: What connection has he with any other company?

Mr. O'Brien: He is a well known banker.

Mr. Ransom: I object strenuously to the continuance of this line of inquiry.

The Master: Let the record note that the application to mark these books in evidence is denied. The offer is rejected.

Mr. O'Brien: Exception. Your Honor will bear in mind that when we asked for the stock books at the office that we were denied the privilege of looking at them. 25532

The Witness: No such thing. I myself told you you could have access to the stock books any time you wanted to see them.

Mr. O'Brien: Mr. Carter, your memory is very—

The Witness: No, sir, I told you that twice.

Mr. Clark: I was just advised by Judge Ransom that we could not have access to them.

The Master: I won't give you access to them.

The Witness: Mr. Stillman doesn't own any stock.

Mr. O'Brien: Apart from the ruling of the Court, does that offer hold good now? 25533

The Master: You don't need to answer that.

The Witness: There is no stock standing in the name of James A. Stillman.

Q. Is there any in the name of any Stillman?

A. Yes, there is a balance as of October 17, 1910 of 50 shares standing in the name of Frank M. Stillman. I don't know who he is.

Q. Frank A. Vanderlip?

A. I find F. A. Vanderlip a holder since August 17, 1910, of 100 shares.

25534 Robert A. Carter, Cross.

Q. Harry Peters?

A. There is no stock held in the name of Harry Peters.

Q. Is there any Peters there?

A. Yes, several.

Q. What are their names?

A. Andrew J. Peters hold 7 shares; Camela Marie Peters holds 146 shares; Curtis A. Peters holds 500 shares; Miss Frances K. Peters holds one share; Jacob Peters holds 10 shares; Mrs. Johanna Peters holds 35 shares; Mary L. Walker Peters holds 25 shares.

25535 That completes the Peters.

Q. Mr. Williams?

The Master: Which Williams? I am not going to have Mr. Carter go through twenty-four Williams.

Mr. Ransom: They have brought in a lot of people named Peters, with no possible bearing on this case.

Mr. O'Brien: Your Honor if you want to expedite this trial, I will submit a list of these names to Mr. Carter.

The Master: No. Ask your questions. What name of Williams do you want?

25536 Mr. O'Brien: At this moment I do not recall Mr. Williams' initials.

Q. Do you know Mr. Williams, a partner of Mr. Peters?

A. No, I do not.

The Master: Next name.

Q. Samuel Sloan?

The Master: What connection has he with this?

Mr. O'Brien: He is a director.

The Master: Is he a director of any other company that is doing business with this company, that you claim?

Mr. O'Brien: That remains to be proven. We will find out when we have him on the stand.

The Master: I will not allow it. Next name.

Q. How many shares has Mr. Cortelyou got in this company?

The Master: What interest has he in any company that they buy material from that may conflict with his interest here?

Mr. O'Brien: Well, I do not propose to answer those questions at this time.

The Master: Not allowed.

Mr. O'Brien: I say that it is perfectly proper 25538
for me to show who has the holdings of this stock?

The Master: Not allowed.

Mr. O'Brien: An attempt was made on cross-examination to show the manner in which this stock was distributed.

The Master: Next name.

Mr. Ransom: Will you ask about Edward Swann, as to how many shares he holds.

The Master: Go on, next name.

Mr. Ransom: May the record show that the minute books are here?

The Master: The minute books described in 25539
the subpoena are here

Mr. Ransom: The minute books are here—I don't think the minute books were described in the subpoena.

Q. Mr. Carter, will you state what the holdings of Mr. Henry A. Rogers were, and what are held by his estate at the present time.

Mr. Ransom: Henry A. Rogers is alive.

A. Henry A. Rogers, I understood you to say?

Q. Yes.

A. There is no stock held in that name.

Q. Is there any stock held in the name of Henry Rogers or the estate of Henry Rogers?

A. No.

The Master: How about Harry Rogers?

The Witness: No, no Rogers whose name begins with an H.

Q. Does the estate of Mr. Anthony N. Brady hold any stock?

Mr. Ransom: Henry Brady has some, if you would like to know about it.

A. No, no stocks standing in the name of the es-
25541 tate of A. N. Brady.

Q. Or anybody as executor or administrator of the estate of A. N. Brady?

A. No.

Q. Mr. C. G. K. Billings?

The Master: What connection has he with this litigation?

Mr. O'Brien: I am asking the witness a question as to a stockholder.

The Master: Objection sustained, question not allowed.

Mr. O'Brien: Mr. Billings and Mr. Brady and a number of people that I want to ask about—

25542 The Master: Counsel having refused to indicate to the Master what possible connection Mr. Billings has with this litigation, the witness will not be permitted to state how many shares of stock Mr. Billings owns in this complainant company.

Mr. O'Brien: Your Honor—

The Master: Next name.

Mr. O'Brien: I want to say to you—

The Master: Do you want to give me another name?

Mr. O'Brien: As I understand it, your ruling is that unless I state a reason for giving a name of a stockholder, on some point that might be a basis of attack upon the complainant in this case you will refuse to have the stockholder's name mentioned.

The Master: I certainly will.

Mr. O'Brien: And your Honor declines to permit the names of the stockholders to be put in evidence?

The Master: I certainly do.

Mr. O'Brien: I take an exception to each of 25544
the rulings.

The Master: All right. Have you any other name that you want to ask Mr. Carter about? If not, Mr. Carter can send the books back to the office.

Mr. O'Brien: I am not through with that, your Honor.

The Master: Well, give me another name.

Q. How much stock has Mr. J. Pierrepont Morgan in this company?

The Master: What has J. Pierrepont Morgan got to do with this case? Mr. Carter, you can send your books back. Apparently Mr. O'Brien 25545
has no other name of anybody who has any connection with this litigation, and I am not going to have names spread on the record that have nothing to do with it. You can send those books back.

Mr. O'Brien: I want to say that I made a request for these books and was refused on the advice of counsel this stock book.

The Master: I do not care anything about it. Now, wait a minute. I want to give you another chance to give me the name of any other

person you say has any connection with this case, in the nature of a coal man, oil man or material man or anybody else who could possibly have an interest in charging this company more than anybody else.

Mr. O'Brien: I want to say to your Honor that that is only one of the several purposes for bringing into this case the names of the stockholders. In the direct-examination—

The Master: Wait a minute, now.

Mr. O'Brien: I am telling you what you want
25547 to know.

The Master: No, you will tell it to me my way. Why do you want to drag J. Pierrepont Morgan's name into this case?

Mr. O'Brien: I want on cross-examination of this witness to controvert what he himself has said and what he has endeavored to have the Court believe—that the stock of this company is distributed over a whole lot of people, thousands of people holding this stock; that it is not in the hands of a few when it is in the hands of a great many people in and around New York City.

The Master: It is quite apparent from the evi-
25548 dence and from the book.

Mr. O'Brien: I want to show—

The Master: Wait a minute. It is quite apparent from the fact that the names of the stockholders are spread over seventeen volumes, each one three inches or more thick, that the stockholding must be distributed among a great number of people. Why do you want J. Pierrepont Morgan's name dragged into this?

Mr. O'Brien: I want to find out how many shares of stock he has got in it, your Honor.

The Master: I do not care anything about it, and I am not going to let you ask the witness how many shares of stock Mr. Morgan has and then have the witness tell you he has none. What other purpose have you got for Mr. Morgan's name?

Mr. O'Brien: Do you know any other way of finding out what is in these books than by putting somebody else on the stand, when he says he cannot give that?

The Witness: I did not say that.

Mr. O'Brien: I am willing to submit a list 25550
to save the time of this Court?

The Master: You are going to do it my way. Is there any other purpose in the world for which you want to bring Mr. Morgan's name into this case? What other purpose have you got, now?

Mr. O'Brien: It is a matter of common repute—

The Master: All right, send those books back.

Mr. O'Brien: Hold on. Your Honor does not intend to hear my statement?

The Master: No, there is no such thing as common repute in this case. Send those books back.

Mr. O'Brien: Your Honor, the money of this 25551
company is deposited in a bank, loans are made to the National City Company, and I have got a right to find out where the majority of this stock is held. The only way I can find it out at the present time, where they will not hand me the information, is to put one of their own men on the stand and ask him who holds this stock. Now, they have opened the door to that and said this is not held in the hands of a few, it is distributed.

The Master: These books will be returned as of no further use to us in this case.

25552 Robert A. Carter, Cross.

Mr. O'Brien: I want to ask the questions and have your Honor pass on them as a matter of record. I ask that the books be retained.

The Master: I will not have any questions as to the names of stockholders, or how many shares they have? I will not allow it.

Mr. O'Brien: Wait until you hear the question, your Honor.

Q. How many people own stock in this company in larger amounts of stock than 100 shares?

The Master: You want the names?

25553 Mr. O'Brien: The names.

The Master: I will not let you have them. They are not necessary.

A. I can tell you the number.

Mr. O'Brien: I take exception to your Honor's ruling.

The Master: It is not necessary.

Q. Now, I ask you how many persons hold larger numbers of shares than 90?

The Master: You can tell him that.

Mr. O'Brien: I suppose I will have to take it up in my direct proof.

The Master: I do not care how you take it

25554 up, but you will not get it here now.

Mr. O'Brien: They have talked to you about expedition, expediting the proof, and seeming willingness that they want to expedite the proof.

The Master: Mr. Carter has testified twice under oath that these books have been subject to examination and available to your men.

Mr. O'Brien: I say to you that I went to his office and requested the books of the executive committee—

The Master: Wait a minute.

Mr. O'Brien: I am an officer of this court.

The Master: Wait a minute. Mr. Carter has testified under oath that on several occasions he has had these books open for your inspection. I take it from what he said that that still stands. I will make no directions. I assume that between now and the 5th of January you can go up and look at these books to your heart's content.

Mr. O'Brien: Well, with that I will suspend the examination on that line. I do not want to bring a lot of books down here and go to the trouble of a subpoena unless there is some specific information we want. 25556

The Master: Next question.

A. Do you want the answer to that question?

Q. Yes, answer that while you are on the subject?

A. I cannot answer as to 90 shares; I can tell you the number that own 100 shares or more—that is, more than 100 shares.

Q. Proceed.

A. 1,560 shareholders, hold 101 shares and more.

Q. Mr. Carter, coming back to where we left off about the exhibits in this case—

The Master: Mind you, Mr. O'Brien, I am not directing Mr. Carter to show you the stock ledgers. He has stated under oath he has no objection to you looking at them. 25557

Mr. O'Brien: Perhaps we better find that out before we proceed, your Honor, or before I suspend the examination.

Mr. Chambers: Ask him if that holds good.

Mr. Ransom: I shall advise Mr. Carter not to answer the question at this time.

Mr. Chambers: Well, ask him.

Mr. O'Brien: If he want to advise with counsel I have no objection.

25558 Robert A. Carter, Cross.

Q. Mr. Carter, have you any objections to our consulting the stockbooks at a time and place to be agreed upon?

A. I personally have no objection, providing that at this particular time when we are excessively busy compiling proxy lists and so forth from these books, that it does not interfere with the conduct of our business in that department. If you want anybody to come to my office I will have any one of those books brought into my office and he may sit there and go over it to his heart's content.

25559 The Master: You do not understand that you are just going to turn over these seventeen volumes to Mr. O'Brien or somebody else to go roaming through them?

The Witness: No.

The Master: To see how many stockholders you have, who they are, what they have been buying in the last week or two or what they have been selling in the last week or two?

The Witness: I would much prefer not to do that, unless the Court orders me to do so.

The Master: I would not order you to do it.

Q. What is it you are disposed to give us to our
25560 heart's content?

A. To look over the books and make no notes from them of any kind.

The Master: He can do that.

Mr. Ranson. I think the matter better be left for the advice of counsel.

The Master: I would not let you in a million years go roaming through there with no real purpose. I would not do it.

Mr. O'Brien: I would like to have it understood just what the limitations are that would be placed upon the inspection.

The Master: You better find out between now and the 5th of January, and ask any questions you want to ask now.

Mr. O'Brien: If we give them three days' notice that would be ample.

The Witness: I think you better make out your list.

The Master: We do not want to have anything in the nature of a misunderstanding later.

Mr. O'Brien: I mean during next week.

Mr. Ransom: If the Attorney General will only— 25562

The Master: If Judge Ransom will stop interrupting we will clear it up. If for some reason or another, misunderstanding or otherwise, you are not going to have an opportunity to look at those books, you better ask this witness any question you want now.

Mr. O'Brien: You have changed your mind on it, your Honor?

The Master: I have not changed my mind at all. But I can see there is apt to be misunderstanding about it. As long as Mr. Carter is on the stand you better ask him the questions you want. He says he will bring in any book that 25563 you want to see, then you will ask to see seventeen books.

Mr. O'Brien: The witness has said it, and you revert to it by saying he said certain things under oath.

The Master: But I am not going to do that.

Mr. O'Brien: Now, your Honor, I have made my statement about it. Apparently if he ever made such an offer to me it was not so understood by me, because I would not be going to the trouble of bringing the books here under sub-

poena *duces tecum*. I would endeavor to cover that and bring in such information and use it in cross-examination here. I am going to make it a matter of record here if they decline to do it. That is all I want, either have them say we cannot have it or we can, and let them stand on their position. If they say we cannot look at them, that can be said and we will let it be a matter of record, that is all.

The Master: Go ahead and ask the question. Just because you have two weeks before you to
25565 put in your proof, is no reason for wasting time.

Q. Do you personally have anything to do with coal contracts, Mr. Carter?

A. They are in my custody as secretary of the company.

Q. Do you know the men that the company deals with in connection with coal contracts?

A. As individuals? Men? We do not deal with men; we deal with coal companies.

Q. Do not quibble with me, Mr. Carter.

A. I am not quibbling with you.

The Master: I will not permit you to scold the witness; you have got to stop it.

25566 Q. Do you know, or have you talked with, any man representing coal companies?

A. No.

Q. That do business with the complainant?

A. No.

Q. Do you know of any man who owns or is connected with a coal company, that sells coal or has sold coal, bituminous or anthracite, to the complainant company, who has stock in this company?

A. I know of no such individual and I have not talked to any such.

Q. Can you state how many persons hold more than 500 shares of stock?

A. No, I cannot.

Q. Will you state how many own 1,000 shares of stock?

A. I cannot. I do not know.

Q. You brought it out here, showing various statistics about the holding of stock.

A. Showing how widely it was scattered, yes.

Q. Have you any data here that goes further into detail than you did in your testimony yesterday?

A. No, I have not. 25568

Q. You did not bring any data here to show us how many held 2,000 shares?

A. No.

Q. You did not bring any data here to show us how many held more than 200 shares?

A. No.

Q. 1,500 or more?

A. No.

Q. 1,000 or more?

A. No.

Mr. Ransom: The Master ruled that those things could be deduced from the figures.

The Master: Proceed. 25569

Q. Is there any stock that has not been issued?

A. Yes, there is an authorized issue very greatly in excess of the amount of stock that is outstanding.

Q. How much in excess?

A. Approximately $25,000,000.

Q. What is this refinancing that Judge Ransom just referred to?

The Master: We had that yesterday. He said that a meeting had called to issue $25,000,000 of Seven per cent Convertible Bonds to the stockholders.

The Witness: That is what I said.

The Master: I know what seven per cent is, I know what convertible bonds are, and what stockholders are. So go ahead.

Mr. O'Brien: I did not catch that last part, your Honor talks so rapidly.

The Master: Proceed.

Q. Mr. Carter, will you state the corporations that hold stock of the Consolidated? Can you give me that information?

A. I could not state them from memory.

25571 Q. Are there many corporations that hold stock?

A. Quite a number.

Q. You could produce a list if counsel so advised you?

A. Of corporations holding stock?

Q. Yes.

A. I could.

Q. Does it run up into the hundreds, or is it a matter that would take a lot of time?

A. You mean corporations?

Q. Not individuals.

A. Firms?

Q. Firms or corporations.

25572 A. Oh, there are quite a number of them. There are a great many trust companies, insurance companies, concerns of that kind, who are holders of our stock, and a great many banking concerns appear as holders of record of our stock.

Q. And trust companies—many of them hold stock?

A. Trust companies, yes, a great many of them hold stock.

Q. Could you get up a list if counsel so advised and have it for tomorrow morning's testimony?

A. Yes.

The Master: You could have it by tomorrow morning?

The Witness: A list of trust companies and corporations? I do not think it would take long to make it up. It might take longer than I think. There may be more of it than I apprehend, but—

The Master: You would have to go through these seventeen volumes and each letter to pick them out, would you not? You have not got them segregated into corporations and firms and things of that sort?

The Witness: There is the seventeenth volume, your Honor, which is supposed to contain the names of corporations and brokers more particularly. I am not so sure about the corporations. 25574

Mr. O'Brien: Well, I will offer, your Honor, that seventeenth volume in evidence now.

The Master: You offered the others of the seventeen in evidence and they were rejected.

Mr. O'Brien: I give the Court a chance to make a separate ruling on that.

The Master: I have made it.

Mr. O'Brien: I note an exception to it.

The Witness: You have considered the Rockefeller Foundation, I suppose, a corporation?

Q. Yes.

A. It is a corporation. 25575

Q. Yes.

A. Well, I know that is right in the middle of the book; and the Master is right, it would take a long time to copy those. I had in mind that seventeenth volume, in which are grouped concerns who handle our stock extensively.

The Master: Active traders?

The Witness: Active traders in stock. Of course, that would be no great trouble, to take off that list of those holders.

Q. Which would you prefer, to have me give you a list of these things that I want or to get them out yourself?

Mr. Ransom: Objected to.

The Master: Objection sustained. This is not a tea party; this is cross-examination of Mr. Carter, you know.

Mr. O'Brien: I try to save a little time. Here Judge Ransom breaks in for the first time in fifteen minutes when he assumes that I am going to ask Mr. Carter about the charter. I am just
25577 suggesting this as a matter of convenience for the complainant, your Honor. I do not know that they will take the position that they do not want to let anybody look at the stock book. They need but to say so, and that story for the time being is ended, only we will have the record indicating it.

Q. Did you give any specific instructions to Mr. Teele when you employed his firm to proceed to get up financial statements? Were there directions given to him as to what you wanted, and what you would need in the case?

A. Only that he should prepare schedules showing
25578 the results of the company's operations as they were shown in the books.

Q. Well, did you indicate to him that he was not to include any of the investments of the company in companies other than the Consolidated Company and investments other than the gas making industry?

A. Yes, I told him that this was a case relating to the company's operations, gas operations.

Q. He was not to include the dividends or the interest on bonds?

A. I did not tell him what to exclude. I did not have to tell him. He knew what to exclude, Mr. O'Brien.

I did not have to tell him what to exclude. I do not think I mentioned the fact of our receiving a dividend from any company to him. He found it the moment he went to the books, and he disregarded it just as naturally as he would have disregarded our investment in government bonds, for example.

Q. Did you in conjunction with his work ask him to tabulate all those returns that you got from other sources?

A. No.

Q. Have you made a tabulation of that kind?

A. If he has, he has done it in connection with his 25580
work, as a means of obtaining a proof on his work, so that he would know that his work balanced and was complete, but that he did not—he was not directed to prepare anything of that sort for me, or for this case.

The Master: Did he furnish you with any such statement?

The Witness: None whatsoever.

Q. Did you direct him whether to go into the books of the affiliated companies?

A. Yes, he was directed to check the books of the affiliated companies.

Q. Did you tell him how far to go?

A. No.

25581

Q. How did you arrange with him to get the work done within the limited space of time before him? Who set out—

Mr. Ransom: What limited space of time?

The Witness: What limited space of time?

Mr. Ransom: Work done in other cases need not be gone into in this case.

Q. How far did you tell him to go into the books of affiliated companies to verify the figures in the books of the complainant company?

A. So far as it was necessary for him to go in order

to satisfy himself that the statements of the company's operations were correctly shown by its books of record and accounts.

Q. Well, it was in terms, or substantially the same terms that you addressed him?

A. Exactly. As a professional auditor, to satisfy himself that everything was correct.

Q. On the question of the set up of his exhibits?

A. That is his own affair. He set them up quite differently from what I would have done myself, probably, if I had been preparing them. He sat them up,
25583 I presume, as he has been setting these things up for 25 years.

Q. If you were setting the figures up and proving it in a Carter way, we could save a lot of time in the trial of this case, couldn't we?

A. You flatter me, Mr. O'Brien.

Q. Isn't that a fact, Mr. Carter?

A. No, I do not think so. I think they were very well set up, very well indeed.

Q. They were pretty?

The Master: Let us get something real.

Q. Have you been admitted to the bar, Mr. Carter?

A. No, Mr. O'Brien.

25584 Q. Did you ever study law?

A. Never, Mr. O'Brien.

Q. You said on page—is this correctly reported on page 750 in the record in the old case, "I should consider a million dollars was a fair conservative amount of working capital such as a company like ours would require for current purposes."

The Master: What year was that made in?

Mr. Ransom: I object to it, he is merely reading a portion of the answer, and has not read the question.

Mr. O'Brien: I tried to save time. There was a question to that and a colloquy that took pages.

The Master: Why should I let you spend any more time on working capital after the time Mr. Chambers spent on it, will you tell me?

Mr. Ransom: I would just like to have your Honor look at the unfairness of what counsel is trying to do. The text shows particularly that what was referred to was a million dollars in cash.

Mr. O'Brien: Your Honor, for this reason, that there are a thousand questions to ask this witness that were not covered by Mr. Chambers.

The Master: How about that, Mr. Chambers? 25586

Mr. Chambers: Yes, I left some of this.

The Master: I am not going to let you cross-examine on working capital. I think that Mr. Chambers has exhausted the subject.

Mr. Chambers: No, I left his previous testimony for Mr. O'Brien.

The Master: You have no right to do it.

Mr. Chambers: Well, I think so.

The Master: I am not going to permit it. I shall assume that when Mr. Chambers, Deputy Attorney General of the State, has cross-examined the witness for an hour or two or more with reference to working capital, that the matter is 25587 pretty much exhausted, and I think we have had enough of it.

Mr. O'Brien: But your Honor, there are a great many questions, and I am positive that when they are asked you will appreciate that they are important, and that they have not been covered by Mr. Chambers. They are new lights upon this subject of working capital both as to the period in 1905 and the period at the present time. Now, I trust that I may be permitted to proceed along that line. I have asked the witness a question—

25588 Robert A. Carter, Cross.

The Master: Well, you read to him the question that was put to him, with the complete question and answer, and I will see what happens. Do you remember being asked this question and giving this answer, in the other 80 cent gas trial?

Q. (Reading.) "Are you familiar with the requirements of the company with reference to the working capital?

"A. Yes, sir.

"Q. Is a million dollars in cash, in your judgment, fair working capital according to the requirements of
25589 the company?

"A. I should consider a million dollars was a fair conservative amount of working capital such as a company like ours would require for current purposes."

The Master: Did you so testify?

The Witness: I think I did. I was referring to cash.

The Master: The question so indicates, cash requirements, a million dollars in 1905.

The Witness: Yes.

The Master: And you think it ought to be a million and a half now?

The Witness: I do. Our business has increased
25590 more than fifty per cent since then.

The Master: Next question.

Mr. O'Brien: Well, if the Judge wants me to be fair to him, I will read the next two questions.

The Master: I want you to be fair to me.

Q. (Reading) "The next item on Exhibit 81, Accounts Receivable, is $2,000,000. That does not represent all the Accounts Receivable of the Company, does it?

"A. No, sir.

"Q. Do you remember, or can you state what the Accounts Receivable were on October 31, 1905?

"A. Well, including the item of Temporary Investment, etc., the amount would be $1,517,071, and that includes what is due from Gas Consumers and from Sundry Debtors of the Company.

"Q. That is included in the $2,000,000 item, whatever that is?

"A. That is included in two million dollar item. They exceed the two million dollar item, as a matter of fact, those two items alone. There was due at that time from gas consumers and what are termed 'Sundry Debtors' $2,000,000"—

The Master: That is the end of the question. 25592
Save the answer. That is the end of what I am going to take. That is a repetition of what Mr. Chambers asked, and I won't have any more of it. Adjourn until tomorrow at 9:30.

Adjourned to Friday, December 12, 1919, at 9:30 A. M.

Last Complainant's Exhibit 403.
Last Defendants' Exhibit AA34.

25593

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 25597

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 12, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 25598
MR. O'BRIEN, Counsel for defendant Swann.

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ROBERT A. CARTER, resumed.

CROSS-EXAMINATION CONTINUED BY MR. CHAMBERS:

Q. Mr. Carter, in that $1,000,000 cash which you said was a fair conservative amount of working capital as of 1905, did you include the interest on dividends? 25599

Mr. Ransom: I object to the question. That is not at all an accurate statement of what he testified as to 1905. He never said or intimated that $1,000,000 was not a very large amount of working capital.

Mr. O'Brien: I am putting the man's exact words. We already have it in the record that he uses the term "cash" as working capital.

Mr. Ransom: He does not.

Mr. O'Brien: I have read the record. You are not in the Public Service Commission now, Judge Ransom, you cannot take this paper. There is not any question of what the record is. The witness made a statement that $1,000,000 cash was in his opinion a fair working capital, and then he added to that—

Mr. Ransom: It is nothing of the sort.

Mr. O'Brien: Counsel can make his objection, your Honor. I submit that we have some orderly procedure here.

25601 The Master: I am glad you feel that way about it, Mr. O'Brien.

(Mr. Ransom hands record to the Master.)

Mr. O'Brien: Mr. Ransom thinks he is speaking *ex cathedra* again.

The Master: Read that question. (Read.) You object to it?

Mr. Ransom: I object to it because it is a deliberately unfair statement of the witness's testimony.

The Master: I will let him answer it.

Mr. Ransom: Exception.

The Master: Leaving aside all technical features of the question, in that million dollars did

25602 you include—

Mr. O'Brien: Interest on dividends or interest to be paid by the company?

A. No consideration was given to the question of dividends at all. Our dividends are paid fifteen days before January 1st, and it would be necessary at that time to make provision for the dividend payable two months and a half later.

The Master: This statement in the record, as it appears, is that he considered a million dollars

as a fair conservative working capital for current purposes.

Mr. Ransom: Cash requirements.

The Master: Cash requirements for current purposes.

Mr. Ransom: They are asking about these items in that exhibit.

The Master: There is no question about that. It refers to cash for current purposes.

The Witness: In addition to that I testified to accounts receivable and materials and supplies.

Q. That is in the record of yesterday. 24604

A. It is in the record of yesterday.

Q. Yes, it is in the record just at the latter part of yesterday's testimony?

A. Yes.

Q. We are not going to hoodwink anybody; we are still after the bare truth.

A. The bare truth, Mr. O'Brien.

Q. Does it include any interests on deposits?

Mr. Ransom: I object to the question. How can $1,000,000 working capital include interest on deposits?

The Master: I think Mr. O'Brien is entitled to interrogate the witness as to how he arrived at the conclusion that in 1905 he needed $1,000,000 for current cash purposes and now he needs $1,500,000. I will let him find out. 25605

Mr. Ransom: Interest on deposits has not anything to do with working capital. You might as well ask him whether it included limburger cheese.

The Master: Yes, I will let him ask that. Do you understand Mr. O'Brien's question?

A. I understand the question, and my answer is that no consideration was given to the item of in-

terest on the consumers' deposits, which is paid by the company every day. Consideration was given, however, to that particular item of cash requirements as distinct from any other or all other cash requirements daily and on the average.

Q. You mean it would be included in there but not as a distinct item?

A. I should say possibly it would not be necessary to make a provision for that particular purpose.

Q. Just to get the clear picture of what you have in mind as the cash requirements, Mr. Carter—

25607 The Master: Why do you have to go back to 1905?

Mr. O'Brien: The questions will apply as of the present time, these questions.

The Master: Why not bring them right down to the present time.

By the Master:

Q. You say you need $1,500,000 for current purposes?

A. Yes, sir.

Q. Tell us how you arrive at that and why you need it.

25608 A. We need it because we are obliged to pay bills for current supplies, we are obliged to pay for labor, we are obliged to meet various obligations as they accrue. For example I pass upon a proposition to order appliances for the company's requirements, gas appliances, a single contract involving a million dollars. A company that does not carry a cash balance cannot transact business, cannot meet its obligations.

Q. Keep to the concrete now, and just give me the elements that enter into it. The idea is that you have to have cash to buy material, to buy supplies; is that it?

A. Exactly.

Q. Stationery?

A. Yes.

Q. Appliances?

A. Yes.

Q. Pipes, fittings?

A. All of the company's purposes.

Q. And everything that goes into your business?

A. Exactly.

The Master: And labor?

The Witness: Exactly.

Mr. Ransom: Money in the branch.

Mr. Goetz: Pay rolls. 25610

Mr. O'Brien: I hear a voice from the rear, and the Judge keeps saying pay rolls.

The Master: Ask the next question.

Q. You would include the pay roll, would you?

A. I have covered labor in my statement of the various purposes for which we have to carry an adequate amount of cash.

Q. You include in that one month's pay roll?

A. I have not included any specific amount for any specific purpose.

Q. Won't you say to the Master just how you came to arrive at $1,500,000 instead of a larger or a smaller amount? Specifically name the items that enter into it first and just tell us how you computed it? 25611

A. I did not compute it.

Q. Did you guess at it?

A. I did not guess at it either.

Q. Did you take what you arrived at in 1905 and say, "Well, we ought to have more now"?

A. No, not any of those things.

The Master: Mr. O'Brien, you have asked Mr. Carter how he got it and you will not let him tell you.

Q. Go ahead, Mr. Carter.

The Master: You said something about an orderly procedure; suppose we follow it a little while.

Mr. O'Brien: I am trying to help him think, your Honor.

The Master: Do not help him think.

A. That is my observation and experience covering a great many years. I have known daily what our cash balance was. I get a report on my desk every morning as to what our cash balance is. I should
25613 feel as though we were sailing very close to the wind if we had less than a million and a half dollars in cash, and I should not expect under normal conditions that it would run much over that but I would expect that we should have available at any time in cash at least a million and a half dollars. That results from my observation of our requirements covering a period of twenty or thirty years.

Q. Did you ever feel the thrill in the company, or did the company ever feel the thrill, of sailing very close to the wind in the matter of cash requirements?

A. It has felt the thrill of an inadequate cash balance.

25614 Q. At what time in its career?

A. Why, very early in its career; particularly it started without any cash and had to begin borrowing within a period of four or five months. After it was organized it had to begin borrowing money for its current purposes. The provision made at the outset was for $1,300,000 in cash for just those purposes.

Q. Mr. Carter, as I gather it, then, you picture this one million and a half out of the retrospect of what you have had on hand from day to day?

A. Not what we have had on hand, but what we have required from time to time.

Q. Could you in general amounts approximate just about how much of that $1,500,000 you would charge up to pay roll, how much to coal, how much to oil, how much for stationery and how much for incidental requirements for cash in the daily work of the company?

A. I would not undertake to do so. I would recommend that you get one of your people to take one of our treasurer's cash books and see what we spend a million or two or three dollars in a month for, as 25616
the case may be.

Q. Mr. Carter, can't you give me some approximation of it?

A. No.

Q. Could you say how much of that you will need to pay the Standard Oil Company?

A. The Standard Oil Company's monthly bill—I know what it is, but I have not the figures in my mind at the moment. I can have that compiled for you if you wish.

Q. Would you state how much you would set apart of that $1,500,000 for coal?

A. No. 25617

Q. Would you say how much for the pipes and fittings and hardware that is used in the works, the Street Department?

A. No.

Q. Could you even faintly approximate the amount that might be used for pay rolls, that you set apart and had in mind for pay rolls?

A. No, I would cover that in one amount.

Q. You just lump it?

A. Just lump them all. Just the same as I do not pretend to assign a particular use to the cash I have in my pocket.

Q. Well, you have perhaps more than you need; then you do not have to.

A. I do not think so. I do not carry more than I believe I need for my purposes.

Q. You perhaps would if you were making $5 a day, would you not?

A. My requirements would then be probably curtailed to some such income as that.

Q. That would be sound business policy, too, would it not?

A. It would have to be. But we cannot curtail our
25619 gas business; that has to go on at the present volume.

Q. Then are we to assume that this $1,500,000 would cover just about a month's expenditure?

A. No, I should think not.

Q. You had in mind when you suggested some one going into the treasurer's book and finding out how much was paid a month—you had in mind that you wanted to have about enough cash on hand to take care of the demands for one month?

A. No, not for my requirements. I suggested that that would be perhaps an easier way for you to get an answer to your question, which I was not attempt-
25620 ing to answer.

Q. You did not feel like answering it?

A. I could not without doing what you suggested I might get somebody to do for you.

Q. Mr. Carter, has the company ever found the need since 1905, of borrowing any money?

A. Oh, yes, it has found the need of doing so.

Q. Has it borrowed it on any occasion since 1905?

A. Yes, it has borrowed as much as ten million at a time since 1905.

Q. At what time?

A. I think in 1913 it negotiated a loan for $10,000,000.

Q. And what was the stress that caused them to borrow money at that time?

A. I do not recall at the moment what it was.

Q. You mean to say you cannot recall why they had to borrow ten million of dollars, or why they did borrow it?

A. Well, I guess at that time they borrowed it to meet some other obligations that were accruing to some extent.

Q. And what were they? 25622

A. I do not recall.

Q. Search your memory.

A. I cannot. I was in Europe at the time the money was borrowed.

Q. But you have this at your finger tips, have you not?

A. No.

Q. Are you not considered to be the works of the company?

Mr. Ransom: Objected to. I will let Mr. O'Brien characterize it if he wishes.

A. I am one of the vice presidents and the secretary of the company. 25623

Q. Will you say, Mr. Carter, that you cannot recall why the company borrowed eleven millions of dollars in 1913?

A. I said ten.

Q. Ten, or whatever it may be?

Mr. Ransom: I object to the question. It has been fully answered.

A. I have suggested as one of the reasons that it had some obligations which had to be retired.

Q. Then it was bonds to be retired?

A. What?

Q. Were they bonds to be retired?

A. No, I think floating obligations.

Q. In relation to Astoria?

A. I would not state now what the purpose was at that time. I knew it at that time.

Q. Were they helping out some other companies, some of the affiliated companies, at that time?

A. I think quite likely they were.

Q. Did they lend afterwards the money that they borrowed?

A. I know this—

25625 Q. Answer my question, Mr. Carter, because I am going to ask you questions until I get it.

A. All right, I am going to answer one question, that it did not require it for its own cash requirements. I can save you a lot of trouble by getting to that at once. I have stated what the cash requirements were and that ten million dollars was not for the purpose.

Q. Was it loaned to some other company after it was borrowed?

A. I should think quite likely some of it was, probably a great deal of it loaned to other companies. Probably the bulk of it.

Q. It does that often, does it, the company?

25626 A. The Consolidated Company loans to other companies?

Q. Yes.

A. It has loaned a great deal of money to other companies.

Q. It is doing it all the time, is it not?

A. Do you mean that it is constantly loaning, or that it constantly holds the obligations of other companies?

Q. Both?

A. Well, it is not loaning all the time. That is not its constant business.

Q. No, it is not?

A. No.

Q. But still it is doing it from day to day?

A. Not from day to day; from period to period.

Q. Yes.

A. Exactly. It finances to a great extent its other companies.

Q. Did it loan any money in the recent stress in the money market?

A. Do you state the recent stress as a reason for lending?

Q. No, I am just asking you a plain, bald fact; has 25628
it loaned money in the recent market—in the recent stress in the money market?

A. I think quite likely it has.

Q. What amount?

A. I do not know at the moment.

Q. Why don't you know?

A. Because I do not burden my mind with figures, Mr. O'Brien. I deal with a situation as it occurs and then I dismiss it from my mind.

Q. You have a good dismisser, have you?

A. I have a good dismisser. I have to have.

Q. The stress I speak of was within the past month 25629
and a half, was it not, or two months?

A. I do not know what stress you are talking about myself.

Q. You do not remember when things went to rack a few weeks ago, when call money went away up, do you?

A. Oh, that was a condition in the money market that does not interest us.

Q. I ask you how much did they put out on loans at that time—the complainant company?

Mr. Ransom: To whom?

Mr. O'Brien: To anybody.

A. I think that the complainant company during the last year has probably retired loans in excess of what it has made.

Q. I did not ask you that, Mr. Carter?

A. Well, I am stating a fact.

Q. You know what I want; do not go over the whole year. I am talking about the recent stress, and I want to know how much money the company loaned, and then I am going to ask you at what per cent of interest they loaned it?

A. I can answer the last question, that the uniform
25631 rate at which we lend money to our affiliated companies is six per cent.

Q. I did not ask you anything about the affiliated companies.

A. Well, you said you were going to ask it.

Q. I did not ask you anything about affiliated companies.

A. Well, whom do you mean?

Q. I say anybody.

A. We have not loaned any money to anybody except our companies in the last year. I did not know what you were getting at. I could have answered that question in a moment. The company has run
25632 two million dollars behind its operating expenses in the last year.

Q. Just a minute, Mr. Carter.

A. It has not had any money to lend.

Q. I have asked you a question?

A. It has had to borrow money in the last year.

Mr. O'Brien: Your Honor, I will have to ask that that be stricken out.

The Master: No, let it stand.

Q. To what affiliated companies have you loaned money during the past year?

A. I have said not only do I believe that we did not lend money, but we have cancelled loans and borrowed money in the last year to meet a two million dollar deficit in our expenses.

Q. Please tell me, Mr. Carter—

A. I am going to tell you the facts.

Q. To what amounts you loaned money to the affiliated companies during the past year?

A. I have stated that my impression is that we not only have not added to our loans to our allied companies, but we have not diminished them, and that we have borrowed money to make up a two million 25634
dollar deficiency in our income as compared with our operating expenses and taxes.

Q. Mr. Carter, I just asked you a question, and I press it now. I do not want any more about what you cancelled; I am asking you what you loaned.

Mr. Ransom: I wish to address an objection to the Court.

The Master: Objection sustained. The question has been answered.

Mr. O'Brien: But, your Honor, the witness has stated positively that they loaned money during the past year and that they loaned money to affiliated companies— 25635

The Witness: I have stated to the contrary.

Q. Well, is it a fact now?

A. I am telling you we have reduced our loans to our allied companies during the past year.

Q. Did you at any time lend them some money and subsequently reduce the loans? Have you given them the use of any money at any time during the last year?

A. I think we may have reduced a loan to one company and loaned a less amount to another company and so we have reduced that amount of our loans to our allied companies during that period.

Q. I am not talking about it in the aggregate.

Mr. Ransom: I object to the tactics of the District Attorney. You think he was teaching school.

The Master: This kind of cross-examination gets you nowhere, and it likewise indicates a lack of knowledge of business relations.

Mr. O'Brien: You are commenting upon my questions, Mr. Master?

The Master: Yes.

Mr. O'Brien: I except to your Honor's com-
25637 ments upon my questions to the witness.

The Master: The exception is noted.

By the Master:

Q. I take it from what you have said, Mr. Carter —and if I am not right about it you may correct me —that at the beginning of the year the various allied companies owed money to the Consolidated Gas Company?

A. Yes, sir.

Q. From time to time those loans are renewed and reduced; in other words a loan that was payable in January might be paid off and another loan made, and in order to do that, of either a smaller or a lesser
25638 amount, and sometimes larger?

A. Sometimes one company transfers to another.

Q. From the beginning of this year you have not paid any new loans which exceeded or increased the lending account over what it was the first year?

A. That is my testimony.

Q. In other words if I go into a bank the last of December and I have a note payable in June, and in June I have not got the money to pay it, I make a new loan for the same amount and pay off the old loan; then I have made a new loan, is that what you mean?

A. And you may have reduced it.

Q. I may have reduced it a couple of hundred dollars?

A. That is so.

By Mr. O'Brien:

Q. Meanwhile in some cases you are lending to one and borrowing from another, and the net result you mean, is that you are a borrower for the year?

A. No, I am talking about our loans and having reduced them during the year because we needed the money.

The Master: I will not have any more of it, 25640
Mr. O'Brien.

Q. Now, Mr. Carter, if this $1,500,000 for cash requirements is to cover the purchase of coal and oil and other materials and supplies necessary and cover pay rolls and take care of all other cash requirements, why do you add to that the quantity of material on hand?

A. Because we have in fact that material on hand and have got to carry it in stock. We cannot pursue a hand-to-mouth policy in the material that we require for our gas operations.

Q. Have you during the past fifteen years had practically uniformly the same amount of material on 25641
hand?

A. In amount, I do not know that it has differed very largely. In cost, very largely.

Q. Well—

A. (Interrupting.) So that it probably costs us fifty per cent more at least for gas-making materials in stock now than we carried a few years ago.

Mr. O'Brien: The witness, I think, should be cautioned to answer.

The Master: He is answering your question.

25642 Robert A. Carter, Cross.

Mr. O'Brien: He has put an addendum in every answer, your Honor, and I would like to have it stricken out. I take an exception to your Honor's ruling on the motion to have it stricken out.

Q. How far ahead of the game, if I may use the colloquialism, has the company kept during this decade and a half with the material on hand?

The Master: I won't allow the question, it is meaningless to me.

Q. For how long a period ahead of the daily wants
25643 has the company kept material and supplies on hand during the past, say, decade and a half?

A. Not as far ahead as we have been—

The Master (interrupting): Just answer the question.

The Witness: I cannot reduce it to days.

The Master: One month, three months, six months, a year?

The Witness: Oh, some, in respect of some materials, weeks, to months in respect of other materials.

The Master: It depends on the availability of materials.

25644 The Witness: Exactly. And we would gladly add to our stock of coal today if we could, and we would gladly add to our stock of oil if we had any storage capacity for it. And we have been advised by the Public Service Commission that we should carry more stock of both coal and oil.

Q. Mr. Carter, could you take an average over these years, from your knowledge of the affairs of the company, and say that on the average you have material and supplies of all kinds a month ahead of your wants, or a month and a half ahead?

A. I could not, because I know that in respect of gas oil, for example, we haven't had any such supply, and we haven't any such storage capacity as that. Fortunately for the company, oil storage capacity is really provided by the company from which it buys its oil, otherwise we could not get along with the small capacity that we now have.

Q. Have you ever gone into the question of securing adequate oil storage?

A. We have, Mr. O'Brien, and we have considered the cost of the land and of the oil tanks and so forth, and we figure that it would cost us a cent and a 25646
half more a gallon to provide that kind of capacity than we pay.

Q. How do you figure that out?

A. It was figured out taking into account the land required, the cost of the tanks, the cost of the transportation, the return on the investment in all of those facilities, we figured it out from a cent and a half to two cents a gallon.

Q. Did you look the waterfront over to find places in which to get this adequate storage for oil?

A. We did not look for it because after figuring the cost of providing our own storage, we deemed it 25647
not a wise undertaking.

Q. Well, would not the question of the land and the location of the site and all of that be necessary before you could properly pass upon the wisdom of such an investment on the part of the company?

A. To that I would say that oil storage would have to be practically adjacent to the plants in order to be available. We could not store oil all over the country.

Q. You find the Standard Oil Company of New Jersey is—

Mr. Ransom: I object to the cross-examination of the witness on matters brought out on cross-examination.

Mr. O'Brien: Read the question.

(The question was read by the stenographer.)

Q. And that is available, isn't it? You have no trouble getting your oil from the Standard Oil Company?

A. They never failed in thirty-five years, to my knowledge.

Q. Would you change your view of that if I were
25649 to tell you that you can now purchase five acres of land adjacent to the Standard Oil Company at Constable Hook, with tanks with a gallonage of thirty-two million, already erected, get the land and the waterfront, deep waterfront, and the proximity to pipe lines and all for a million and a half? Would you change your view about how much per thousand cubic feet of gas it would be necessary for you to pay for adequate storage to store your own oil?

A. I do not think it would be a suitable place to store oil, if the company was going to undertake the storage of it, and I think it would be no advantage in doing it there.

25650 Q. Well, I am asking you—you would not change your views then?

A. As to the cost?

Q. As to the cost and as to the wisdom of having your own oil storage instead of depending upon the Standard Oil Company and its oil storage?

A. We would still have all the difficulties of harbor transportation, we would still have to have a fleet of oil scows and the expenses incidental to the handling of it.

Q. Let me ask you—

Mr. Ransom (interrupting): I object to further cross-examination on this point, on this subject.

The Master: Let him cross-examine.

Q. When did you go into this matter, Mr. Carter?

A. We have gone into it—we went into it sixteen years ago, and we have gone into it since, and we have gone into it since the question has been up again.

Q. Who went into it?

A. Why, our Engineering Department has gone into it. 25652

Q. Mr. Woods?

A. No; Mr. Morris has gone into it.

Q. Woods did not go in on that then?

A. No.

The Master: I won't let you ask that. When he said Mr. Morris did it and he said Mr. Woods did not, I won't allow any more questions there.

Mr. O'Brien: I find on asking him questions his memory grew kind of warm and clear.

The Master: I have let you have a wide latitude.

Mr. Ransom: He is cross-examining his own witness now. 25653

The Master: I think it is a good thing to have this out and get it off our chests. We have got two weeks to spend on this, let's get it all out.

Q. Tell me how far the investigation went, was it just a conference, or did it take on a very wide investigation into the matter?

A. It took on the form of a serious—

The Master: Was it serious?

The Witness: Well, it was serious enough for drawings to be made, costs of tank construction computed, land cost, the cost of transportation,

the pipe connections, the upkeep and maintenance, and return on the investment, and all that sort of thing.

The Master: Danger of lightning and fire?

The Witness: The insurance would be a very substantial item, your Honor, and those were the considerations, and the expenses attached to it, that made it unattractive to us as a proposition, as long as we were able to get oil at a reasonable price without that expense.

The Master: And you would not care to take
25655 Mr. O'Brien's judgment to the contrary?

The Witness: I would not, your Honor, I am sorry to say.

The Master: How are you going to get me to say that something ought to be done just because you or your engineers think it is a good thing to do in some other way, and Mr. Carter and the officials of this company, the engineers of this company, do not think it is wise, for other reasons? Where are you going to land on anything like that? Do you think I am going to decide a question of business judgment and operation of that character? I won't do it.

25656 Mr. O'Brien: You mean you could not feel that you ought to overrule their judgment on that, your Honor?

The Master: No. I mean this, that as against the testimony of Mr. Carter and Mr. Addicks and other witnesses in the Gas Company giving the reasons why they did not think it is wise, you put in testimony as to why you and your engineers do think it is a good thing, that I do not believe that as a master I am called upon to balance that question of judgment, but that I am bound to look at it from the standpoint that these men have used probably as good judgment as the

other men think they are using, and to decide this case upon actual conditions rather than what might be done if somebody else's guess was good That is the way I feel about it.

Mr. O'Brien: Well, I am sorry to have the Master express his convictions on the subject, because I think you will have some light on it before this case is finished.

The Master: Go ahead. I am telling you how I feel about it. If you think it is useful examination, go ahead, or if you think that the higher courts ought to be interested in it go ahead. 25658

Mr. O'Brien: I want this Court, I want you interested in it.

The Master: I am telling you the kind of job you will have to satisfy me.

Mr. O'Brien: Well, I am assuming now from what you say that you have already made convictions on that subject, and that you cannot be altered.

The Master: No, I have expressed my views about it.

Mr. O'Brien: Well, the record is there. I do not think you meant to say that, I do not think you meant to have it on the record. 25659

The Master: I mean to say anything I say.

Mr. O'Brien: When the record comes back and speaks to you—

The Master: That is one reputation I have in this town, that I usually mean what I say. Some people do not like what I say, very frequently, but I mean what I say.

Mr. O'Brien: I know, your Honor, but I want to call to your attention that you are placing conclusions as we go along on various topics.

The Master: I am giving you the operation of my mind.

Mr. O'Brien: Yes, you are giving us more than the operations.

The Master: Go ahead now.

Q. Mr. Carter, when was this storage examination made?

The Master: I think he said they started sixteen years ago and had done it periodically and frequently since.

Mr. O'Brien: I want to find out just about
25661 the time, so we can find out who did it, and what he did, and what the data was that they had before them. Tell me the time when the investigation or examination was made, Mr. Carter, and if several times, when or about when it was made.

Mr. Ransom: I object to the question.

The Master: I shall allow it.

Mr. Ransom: When Mr. Addicks was on the stand, who had a lot of these figures, Mr. O'Brien objected to their being given.

The Master: I will allow it.

The Witness: They were made and given in
25662 connection with the prior proceeding.

The Master: The same question came up then.

The Witness: The same question came up then, your Honor. Since then the matter has been discussed more or less informally, and within the last three or four months, I would not attempt to fix the date, computations have been made which have confirmed our opinion on this subject, and I have personally expressed the opinion that such an investment as that is one that a company like the Consolidated Company has no business to make.

Mr. O'Brien: I will ask the Master to direct the witness not to add on to the answers and to the questions.

The Witness: The company is a Gas Company.

Mr. O'Brien: Just a minute.

The Witness: And not an oil company.

Mr. O'Brien: Just a minute.

The Master: You have gotten into a line of examination which is not strictly cross, and I am going to let you and Mr. Carter argue it out to your heart's content.

Mr. O'Brien: Will you direct the witness to 25664
respond only to my questions, your Honor?

The Master: I think he is responding, and I am going to let him respond in the widest kind of manner, and give you the opportunity to talk it over with Mr. Carter.

The Witness: Now, I will add, Mr. O'Brien, that I do not think you or anybody else—

Q. (Interrupting.) I do not want you to add anything to me, Mr. Carter.

The Master: I have told you—

Mr. O'Brien: Well, I am going to ask your Honor again to direct the witness—there is no question before the witness. 25665

The Master: Well, you better put one.

Q. Now, Mr. Carter, who made these calculations within the past three or four months?

A. I know Mr. Morris did for one; I think Mr. Addicks made perhaps independent calculations to check up Mr. Morris.

Q. Was Mr. Morris directed to do that by the officers of the company?

A. I should rather assume that he was asked by Mr. Addicks to make these computations.

Q. And do you know how far he investigated the matter?

A. How far Mr. Morris investigated the matter?

Q. Yes. Did he look into sites, did he determine the costs of—

The Master: Let him answer.

A. He investigated it sufficiently to make a—

The Master: Do you know how far he investigated?

The Witness: I do not believe that he sought sites.

25667 Q. How far did he go into the matter of determining whether or not that would be a wise thing?

A. He went into it from the engineering point of view.

Q. Did he make a written report on it?

A. Not that I am aware of.

Q. Did you see any report of any kind on this subject from him or from Mr. Addicks?

A. No, I have not seen a report.

Q. Was the matter taken up by the executive committee?

A. No, sir, not that I am aware of.

Q. Well, how did you come to know that he did
25668 it, through Mr. Addicks or through Mr. Morris himself?

A. I talked to him about it myself, discussed it with him.

Q. When you talked to him about it, did he have any data there?

A. I think he had. I think he had some figures; in fact I know he had.

Q. And what did the figures cover, the cost of erecting tanks, the cost of transporting the oil from a given locality to where it would have to be used?

A. Yes. I do not think that they were figures got-

ten up in great elaboration and detail; I think they were rather rough estimates of the cost of constructing these tanks, the amount of capital that it would be necessary to invest in this equipment, tanks and pipes, that nobody will guarantee that we would have any use for it for two years.

Q. Mr. Carter, then I take it that you don't know the details of his work, and you would not want to say just how far he went in his investigation three or four months ago?

A. How far he went? He went far enough to—

Q. You say they were rough estimates? 25670

A. (Continuing.) Give an opinion.

Q. You say there were rough estimates?

A. Those that were made at the time that I was discussing the matter were rather rough estimates. In how much detail Mr. Morris and his department may have gone in estimating the cost of constructing tanks and that sort of thing, I do not know.

Q. Mr. Carter, did this matter come—

Mr. Ransom: I want to make an objection.

The Master: How do you know you do?

Mr. Ransom: Because I object to the line of inquiry.

The Master: He hasn't stopped. 25671

Mr. Ransom: He never stops.

The Master: Wait until he asks a question.

Mr. Ransom: When Mr. Addicks was on the stand he had figures which he had made up, figures which Mr. Morris had made up. I endeavored at that time to interrogate Mr. Addicks, who was well qualified as an engineer to give those figures and computations and drawings, and so on, in great detail. Mr. O'Brien objected and that line of testimony was excluded. Now he

selects another officer of the company and endeavors to interrogate him on these matters.

The Master: That is all right. If Mr. Carter doesn't know he can say so.

Q. Mr. Carter, do you know whether the results of Mr. Cullen Morris' investigation were brought in before the executive committee and discussed?

The Master: He has already answered that. Objection sustained. He said the executive committee had not taken that under consideration and discussed it so far as he knew.

25672 Q. Do you attend any of the meetings of the executive committee?

A. Rarely.

Q. Is there any particular branch of the company's business that you are expected to take up with them and discuss with them?

A. Not directly.

Q. Well, is your O K required for coal and oil contracts?

A. No.

Q. What particular branches of the company's business are you responsible for to the executive committee?

25674 Mr. Ransom: I object to that.

The Master: I will allow it.

Mr. Ransom: Exception.

A. My duties as secretary are outlined in the by-laws of the company. I am the custodian of the minute books, the stock transfer books—

By the Master.

Q. No, this is the point, Mr. Carter. The impression I got from the testimony that has gone in, and I take it that Mr. O'Brien has the same impression is that Mr. Addicks, in charge of oil contracts,

will go in before the executive committee and recommend making certain contracts—

A. Yes.

Q. And Mr. Gawtry will go in before the executive committee and recommend certain action?

A. Yes.

Q. In other words that certain heads of departments and certain officers having charge of certain things go before the executive committee and present matters for action, and recommend for or against action by the executive committee?

A. Yes. 25676

Q. Now, what character of items do you bring in before the executive committee? You don't have to enumerate them all, but give us a general idea.

A. I think any substantial order for any supplies required for the commercial or appliance department would require my approval before they would be presented to the executive committee by Mr. Addicks, who acts as the secretary of that committee.

By Mr. O'Brien:

Q. What else, if anything?

A. What else of what?

By the Master:

Q. Do you go into conference with them on financial questions? 25677

A. With the executive committee?

Q. Yes.

A. Not at sessions of the committee. I would rather discuss those things—I would usually discuss those matters informally out of committee. When the matter went to the executive committee it would go with the approval of the president of the company, who is a member of the committee, and he would understand fully what the requirements were and be prepared to present the subject to the executive committee for their action thereon.

Q. In other words, your direct contact is with the president of the company?

A. Exactly.

Q. Your discussions are with him?

A. Exactly.

Q. So that he understands and approves or disapproves your views, and if he approves them he brings them to the executive committee?

A. Exactly.

By Mr. O'Brien:

Q. What are Mr. Cortelyou's office hours?

25679 The Master: I will not allow that question. It is a perfectly stupid and useless question.

Mr. O'Brien: Your Honor, the defendants are going to take the position, concerning some of these officers, that they are useless to the company at the salaries that they are paid, and while it my seem sacrilegious to some to ask what Mr. Cortelyou's salary is, and what other salaries are, and what they do, that is in this case and cannot be kept out of it, your Honor.

The Master: Well, I will keep this question out on this cross-examination.

Mr. O'Brien: I am going to ask Mr. Carter
25680 now just what Mr. Cortelyou does for his salary in that company.

The Master: I won't allow the question. It is not proper cross-examination. It does not come into the cross by any stretch of imagination. I won't allow it.

Mr. O'Brien: He is talking about the wants of the company, the present and future cash requirements, the need of paying salaries—that is this question, isn't it, your Honor?

The Master: Yes.

Mr. O'Brien: Now, I am going to ask why he is paid that salary that he is paid and how he earns it.

The Master: Ask your question.

Mr. O'Brien: I don't want to embarrass a man who is a co-officer of the company, asking him to make any criticisms of his chief, but I am going to find out the general routine of Mr. Cortelyou's work, how much time he spends on the work of this company in connection with its business of making gas, and how much of his time and mind and energy is given to this company's business 25682 extraneous to the gas business.

The Master: My idea has been to give you the widest possible latitude in cross-examination, permitting you to ask anything that by the widest stretch of imagination might bear on the testimony given by this witness, but you apparently think I am going to permit you to roam all over the world. I am not.

Mr. O'Brien: As soon as you announce your feeling, your opinion, your decision on a question, and on a line of examination, I am going to try not to take up the time of the Court after I have made the record in the case, but I propose 25683 to bring out—

The Master: Ask your questions.

Q. Does not the $1,500 cash requirements which you have included in your idea of working capital at the present time, of the complainant company, include salaries of officers?

A. It includes any of the purposes for which cash is expended from day to day.

The Master: That will include the salaries of officers?

25684 Robert A. Carter, Cross.

The Witness: Exactly, everything; I have said everything.

Q. And it includes Mr. Cortelyou's salary?

A. Undoubtedly.

Q. And Mr. Addicks' and Mr. Gawtry's?

The Master: The question is not allowed. He has included all of the officers.

Q. Now, I will ask you, and the Master may rule on it, and I will take an exception—

The Master: I will rule on it.

Q. (Continued.) How much time does Mr. Cor-
25685 telyou spend on the business of the company relating to the making and selling of gas?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. How often do you report to Mr. Cortelyou?

The Master: Question not allowed.

Mr. O'Brien: Exception.

Q. On the purchases of supplies for the Commercial Department, or appliances, or on engineering problems, or any matters that you do take up with him?

The Master: Question not allowed.

Mr. O'Brien: Exception.

25686 Q. Do you see him once a week, or twice a week, or daily—

The Master: Same ruling.

Q. Or monthly?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What officer is charged, if there is any particular officer, with the work of taking care of the finances of the company?

The Master: Same ruling.

Q. Making report to the executive committee on that?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Is that a matter that is divided up among these executive committees, each for himself, or is there some one officer charged with the routine work of taking care of the finances of the company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Is that assigned to the treasurer or to you, or to Mr. Addicks, or to Mr. Gawtry, or to some member of the executive committee?

The Master: Same ruling. 25688

Mr. O'Brien: Exception.

Q. Is the auditing of the company's books a matter under your particular supervision, Mr. Carter?

A. Yes.

Q. You employ the auditors, the outside auditors from year to year, do you?

A. Yes.

Q. You pass upon their reports before their bill is paid?

A. Yes.

Q. Do you have direct charge of Mr. Brundage's work?

A. Mr. Brundage is one of my assistants. 25689

Q. Well, he is answerable to you rather than to any other superior?

A. Yes.

Q. Directly under you?

A. Directly.

Q. Is there anybody else besides Mr. Brundage in the Accounting Department from whom you receive reports, I mean routine reports, not something on occasion, but routine reports as to accountancy?

A. I receive reports from the Accounting Department of all the companies. Are you speaking of individuals?

Q. I mean is everything done by you through Brundage, or is there somebody else with equal authority in the Accounting Department?

A. He ranks next to myself in the Accounting Department.

Q. And the routine business of the Accounting Department comes through that channel to you?

A. Yes.

Q. And also you get all the accounts of the affiliated companies?

A. They all report.

25691 Q. And you are in touch with the affairs in that way of all the affiliated companies?

A. Perfectly familiar with all of their affairs all of the time.

Q. On this amount of working capital, Mr. Carter, have you taken into account, the amount of money you have on hand belonging to consumers, or has that been entirely excluded from any consideration as to the cash requirements?

The Master: What money?

Mr. O'Brien: Cash on deposit, consumers' deposits.

Mr. Ransom: I object to that as already asked

25692 and answered.

The Master: I will allow it.

A. I have not considered that at all in the matter.

Q. It has not figured in any way with you then concerning the cash requirements?

A. We do not require any cash for that purpose. Consumers' deposits are being paid and are being refunded every day, and the difference between the balance at the beginning and at the end of the year is almost negligible.

The Master: The money comes in and goes out from day to day?

A. Yes, sir, against that account. One hand just about washes the other.

Q. Have you taken into account the use which you have of the large amount of consumers' deposits, for the financial purposes of the company in figuring out your idea of working capital?

A. No, because that balance that stands in the account now, some of it has been on deposit for a great many years. Just what form of asset that amount of consumers' deposits is represented in I don't know. You can pick out any and say that is it, and I will not dispute it with you, except cash; I should say it 25694
was not in cash.

Q. You mean it is invested somewhere?

A. Invested in some way, yes.

Q. What is that amount at the present time?

A. Of consumers' deposits outstanding?

Q. Yes.

A. I don't recall; a couple of million dollars.

Q. It would be over two million, you think?

A. Something over a million at any rate; I would not be sure about the amount.

The Master: Does not Teele's exhibit show that?

Mr. O'Brien: I suppose it is included in the 25695
amount there somewhere.

The Witness: Yes, Mr. Teele's exhibit shows that—

Mr. Ransom: It is about $1,200,000.

The Witness: Mr. Teele's exhibit shows how the interest is computed at the beginning and end of the year.

Q. In these cash requirements have you considered the amount of that old fund from the old case that you still have with you which runs up into hundreds of thousands?

25696 Robert A. Carter, Cross.

A. That has not been considered at all.

Q. You have not considered that as usable in connection with the requirements from day to day of the company?

A. I should think that that would probably be represented in some form of investment long ago.

Q. It has been put into investment somewhere?

A. It is invested in something. I don't know what. Loaned out—

The Master: The stenographer will please note that Exhibit 205, statement of revenues and ex-
25697 penses for the year ending December 31st, 1918, Schedule 13, shows balance of consumers' deposits December 31st, 1918, of $1,093,249.76; and balance of consumers' deposits, January 1, 1918, of $1,028,001.80.

I have placed this upon the record, Mr. O'Brien, as showing the uselessness of these questions when it is already in the record.

Mr. O'Brien: I think it will be valuable to have it in the record at this point.

The Master: No, if it is in once it is in for everything.

Q. Now, Mr. Carter, the moneys that we have
25698 referred to, the consumers' deposits on the one side amounting to $1,038,000 and the amount of money that is still with you, deposited by consumers and still retained by the company after the last litigation involving the rate, they are used, they are invested somewhere by the company, are they?

A. Yes, I don't know about deposited with consumers. You refer to the unpaid balance collect during the pendency of the prior proceedings?

Q. Yes. What is that amount, Mr. Carter, approximately?

The Master: You need not answer that question, it is in the record. Perhaps you don't think I remember it. It is about $500,000, between $400,000 and $500,000. Am I right?

The Witness: Yes, I think all the companies combined is more than that.

The Master: That is the amount that is on your books.

Q. You have on rental some 475,000 appliances?

A. The companies combined have such amount as that. Our own appliances on rental I think are less than 300,000, I have the exact figures if you want 24700
them, and I have testified to them.

Q. I would like to have them.

The Master: No, we have had it once.

Q. Can you tell me, Mr. Carter, what the annual rental of those appliances is?

The Master: I won't allow it; it is in the record.

Mr. O'Brien: Your Honor, this has directly to do with working capital.

The Master: It is in the record. Mr. Teele's exhibits show.

Q. The rentals on appliances, Mr. Carter, rented to your consumers, are required to be paid in advance, 25701
are they not?

A. Yes.

Q. Have you in determining the cash requirements in your testimony on working capital taken into account the fact that you have many hundreds of thousands of dollars of the consumers' money paid in advance for the use of these appliances?

A. Consumers' money?

The Master: Don't stress that language. The point is, did you take into consideration the fact that you got money in advance?

The Witness: Yes.

Q. Have you taken that into account, did you consider it at all in connection with—

A. I have not taken into account any source from which this amount of money is derived. I do not consider that that is material. If consumers owe us rent it is in the accounts receivable. If they have paid us it is in the cash, or, the cash may include some amount paid by consumers in advance for rentals, but the source from which that cash comes does not interest my mind any.

25703 Q. Mr. Carter, when you endeavored to figure out what might be the cash requirements as of this particular period in your testimony did you endeavor to calculate the amount of money that is paid in advance annually for the use of the many hundreds of thousands of dollars of appliances, by the consumers of the company?

A. I certainly did not, or any other source from which that cash might be obtained. It has nothing to do with the case.

Q. The number of appliances rented on which you get this money annually in advance has increased in hundreds of thousands since your testimony in the old

25704 case, has it not?

A. The number of accounts you say?

Q. Yes, the amount of money that is coming in from appliances has increased a thousand fold, hasn't it?

A. The amount of money coming in has not increased a thousand fold, but it has increased substantially, from appliances, since 1906.

Q. The appliance business was then in its infancy practically, was it not?

The Master: Question not allowed. We have had it over and over again. What is the point now?

Mr. O'Brien: The point is, your Honor, that they have got enough of O. P. M.—other people's money—paid in advance for the use of these thousands of appliances to supply their wants.

The Master: That is your argument on the question of working capital. You have got it in the record on which to base the argument. What is the use of arguing with the witness?

Mr. Goetz: The entire investment of the company is O. P. M.

The Master: Now, you are starting something. It is perfectly clear that they have this $400,000 25706
or $500,000 that they get in advance on appliances, and they get in cash from customers who pay their bills, and they get cash from other sources, and all these points can be argued by counsel. What is the use of arguing with the witness?

Q. Mr. Carter, I take it, and you have given an answer to this before I think, but I want to get it clean-cut, and that is, that none of this cash requirement is designed to cover interest that may be due in the future on bonds or on stock?

A. The particular use that that money is to be put to at any time has not entered my thought for a mo- 25707
ment. I have computed the cash that we should require for all purposes on the average as $1,500,000. My thought has not gone beyond that point, as to whether it would be used from time to time for this, that or the other purpose temporarily, restored, in and out, maintaining an approximate balance of $1,500,000.

Q. Then it may include the payment of dividends on stock and interest on bonds?

A. It might at some day be used for that purpose

temporarily, but the payment of interest on our bonds and dividends on our stock is supposed to come out of our earnings.

Q. This cash includes earnings, does it not?

A. No—it might—I would not say it would not include earnings. I know mighty well it did not include earnings in 1918, not by two million dollars.

The Master: That is 1919?

The Witness: I mean 1919.

Q. Are these cash requirements calculated by you to cover the payment of materials and supplies used
25709 in new construction?

The Master: I won't take any more of that.

Mr. O'Brien: This is very important, your Honor.

The Master: But I think he has covered it.

Mr. O'Brien: I don't think he has on that point.

The Master: The cash they have on hand might be used for any possible purpose, to buy material, to pay for labor construction work, repair work, dividends, or interest, or anything in the world. Am I right about that?

The Witness: Yes.

25710 Mr. O'Brien: I will put it in this case, and perhaps one answer will cover it.

Q. Mr. Carter, does your working capital or your cash requirements include moneys to be spent upon new construction or extensions of plant which might be made the subject of bond issues?

Mr. Goetz: I object to that. In the first place he has fully covered what he has included. In the next place he is not talking about construction or interest on construction.

The Master: I will allow the question.

A. I have stated that the provision of that amount of working capital does not attempt to forecast the use to which temporarily the amount may be employed, or some of it.

The Master: You might use that cash on hand to build a million dollar extension, and then capitalize it by the issue of bonds against that?

The Witness: Yes, and restore the cash.

The Master: That is what people do?

The Witness: They do it right straight along.

Q. Now, Mr. Carter, you are acquainted with the time that bills are paid for coal? 25712

A. Under normal conditions, yes, but we have been so strapped during the past years that I do not think we have lived up to our reputation for prompt payment of bills.

Q. Well, would you say on the average in the last two years as to how promptly you have paid your coal bills?

A. We endeavor to pay our bills always, Mr. O'Brien, around the 21st, the 20th and 21st of the month. That is the time we begin to get out the vouchers and checks.

Q. Well, take it on the average in that period of the last two or three years, how promptly have you 25713 paid them? What is the fact on it?

A. Well, I have not watched that very closely.

Q. Some of them are three months after, are they not?

A. I have not been watching that. I have been watching this proceeding more closely than I have the manner in which bills are paid in the treasurer's department.

Q. During that period?

A. During that period I have not paid much attention. I know what the company's policy is. I

know what its usual practice is, but to what extent it may have departed from during the current year I am not prepared to say.

Q. The vouchers indicate do they not that payments of coal have been two or three months late?

Mr. Ransom: I object to the question. The vouchers are all in evidence, offered by Mr. O'Brien. What is he trying to do, contradict his own exhibits?

The Master: I will sustain the objection. The vouchers are sufficient basis for argument.

25715 Q. I will ask you, Mr. Carter, whether it is not a fact that your coal bills have on the average, in the last three years, been paid two or three months after delivery of the coal?

Mr. Ransom: I object to that.

The Master: I will let the witness state if that is the fact.

A. I would say that is absolutely not the fact.

Q. What would you say would be a fair average?

The Master: That objection will be sustained.

Mr. O'Brien: I want the witness's memory on it only.

The Master: I will not allow it. You have in

25716 evidence the vouchers for the last year or so, I think during all the year 1918.

Mr. O'Brien: That does not show the payment of the money.

The Master: Yes, every one of them shows the date when it was paid.

Q. How about the oil, Mr. Carter?

The Master: The vouchers are likewise in the record.

Mr. O'Brien: I am going to ask Mr. Carter now, as part of his testimony, to test his memory. He has been testifying on working capital—

The Master: The question will not be allowed.

Mr. O'Brien: Will you wait until I ask the question?

The Master: Yes, go ahead.

Q. Mr. Carter, what period did you consider in connection with your estimate of cash requirements to be the time within which you would be compelled to pay your bills to the Standard Oil Company of New Jersey for the oil delivered?

The Master: You can answer that, Mr. Carter. 25718

A. It might be necessary at any time, Mr. O'Brien, for us to trespass upon the good nature of our creditors in order to maintain a cash balance.

The Master: What do you figure?

The Witness: We figure on paying our bills monthly.

The Master: This entire estimate of cash requirements of $1,500,000 is based upon the theory that you pay your bills as you hope to do, monthly.

The Witness: Exactly.

The Master: Next question.

Q. Then you have not taken into consideration what have been the actual dates and periods elapsing 25719 between the delivery of material, during the last three years, and the time the bills were paid?

A. Not a particle.

Q. Mr. Carter, will you tell me at this time how much the complainant owns of the stock of the National Coal and Coke Company?

The Master: Isn't that all in the record?

Mr. O'Brien: No, your Honor.

Mr. Ransom: That has been already asked.

The Master: Isn't that all in the record?

Mr. O'Brien: No. As to the financial interest of the company, I am going to ask the witness as to all these companies so you will know what I am after.

The Master: I thought it was all in the record. Give us the stockholdings of all these affiliated companies.

Mr. O'Brien: Stocks and bonds.

Mr. Ransom: That is all in the annual report. I offered it in evidence and they would not take it.

The Master: Let Mr. Carter give it.

25721 Mr. Ransom: How can he give it?

The Witness: I would not attempt to give it from memory, your Honor.

The Master: Then you cannot give it?

The Witness: I cannot give it.

Q. Haven't you got any papers here to refresh your memory?

A. No, I do not happen to have, Mr. O'Brien.

Q. Can you not send for them and get them?

The Master: That will not be allowed. The witness says he has not got them here. I do not see how it is cross-examination on anything he testified to, anyway.

25722 Mr. Ransom: When I offered it he would not let it go in.

Q. Mr. Carter—

The Master: I am not going to let you read that, Mr. O'Brien. I am not going to let you read anything from that record unless you show me that it contradict's something he said on this trial, that is all.

Mr. O'Brien: The witness says he cannot state the amount of stock in the National Coal & Coke Company.

The Witness: I can state the National Coal & Coke Company.

Mr. O'Brien: That is the question.

The Master: Well, I will not allow it, because it is not proper cross. If you want to prove it you can prove it in your case. I am not going to take it here.

Mr. O'Brien: What is that?

The Master: If you want to prove that you can prove it as part of the facts in your case. I will not take it now; it is not cross-examination of anything this witness has testified to. 25724

Mr. O'Brien: The witness was called and asked about the whole capitalization of all the companies, the relations between the complainant company and the affiliated companies.

The Master: No, he was not anything of the sort. I will not take it now; you might as well have it clear on the record. I have changed my mind to a considerable extent. I had hoped I would get somewhere by letting you go wide afield, but I have made up my mind to enforce the rule of cross-examination and limit you to a direct attack on anything testified to by this witness. If there is anything you want this witness 25725 to testify to as part of your case, you will have to call him as your witness in your case. Let us understand that once for all. I am sorry I wavered at all on it: I do not get anywhere.

Mr. O'Brien: Your Honor is assuming all along there is not a chance of your dismissing the complaint in this case.

The Master: I do not know anything about it. Next question.

Mr. O'Brien: You are continually talking about our case here, as if it was a sure thing

we were going to have a defense put in, and that you would not dismiss the complaint in this case.

The Master: Are you going to ask the next question?

Mr. O'Brien: Let me make my record on that. I will ask Mr. Carter now. The witness says he is ready to testify as to the amount of stock that the complainant company has in the National Coal & Coke Company.

The Master: Yes, and I say I will not take it.

25727 Mr. O'Brien: And the amount of money the complainant has invested in the bonds of the National Coal & Coke Company.

The Master: Yes.

Mr. O'Brien: I am going to ask the witness now if his cash requirements include any loans—cash requirements, including capital stock, include the loan of money to assist the National Coal & Coke Company.

The Master: The objection is sustained. The question is not allowed because it has been fully covered in the witness's testimony previously given.

25728 Mr. O'Brien: Exception.

Q. I will ask that question generally now of the affiliated companies, Mr. Carter. Does your estimate of working capital include the loaning of any moneys to or the taking care of the daily requirements of the Astoria Light, Heat & Power Company?

The Master: I shall let the witness state whether it contemplates taking care of the daily cash requirements of the Astoria Light, Heat & Power Company other than and in addition to the loaning account between the two companies.

A. It does not. Nor even in regard to the loaning account. It is not contemplated that any of that money will be loaned any company, nor used for their cash requirements.

Q. Does your estimate of working capital include any moneys to be paid to the Astoria Light, Heat & Power Company for gas furnished by that company?

A. I have covered that in my answer, that it is to be used for any of the company's purposes.

The Master: In other words, you would pay bills to the Astoria the same as anybody else? 25730

The Witness: Precisely.

Q. Does it include, your estimate of working capital, the loaning of any moneys to the New Amsterdam Company?

The Master: The question is not allowed as already covered.

Mr. O'Brien: Exception.

Q. The Standard Gas Light Company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. The New York Mutual Company?

The Master: Same ruling.

Mr. O'Brien: Exception. 25731

Q. The Northern Union Gas Company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. The Westchester Lighting Company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. The New York & Queens Gas Company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. The East River Gas Company of Long Island City?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. The Central Union Gas Company?

The Master: Same ruling.

Mr. O'Brien: Exception in each instance.

Q. In considering what are the daily requirements of the company, or in your estimate of working capital, have you included as available funds the returns from any of the investments of the complainant company outside the returns from the sales of gas?

Mr. Ransom: Objected to. It has already
25733 been answered and gone into.

The Master: I will allow that.

A. I have already testified on that point, Mr. O'Brien, that the fund, the cash fund or requirement that I have estimated to be necessary to provide for the company's purposes, takes no account of the source from which it is derived, because it makes not one particle of difference what source it is derived from.

Q. Can you not say, Mr. Carter, whether you excluded directly from this amount returns from investments in things other than the gas business of the complainant company?

25734 A. It does not make a particle of difference where that $1,500,000 of money comes from. We have got to carry that as a balance of cash for our requirements. It does not make any difference where we got it from; it is our money and we are entitled to earn a return upon it, and that is why we included it in our working capital of $4,625,000.

Q. Isn't this million and a half of cash that you have considered necessary—isn't that moneys that you say you require over and above the receipts from day to day from the gas sales of the company and the sales of appliances?

A. I do not know whether I can make it any plainer.

Q. I am asking you a plain question.

A. I say it does not make any difference where it comes from, whether we collect it from consumers, whether we borrow it, whether it is given to us. It makes no difference as to the source from which that $1,500,000 comes; it is the amount we require for our business as cash, and as such should be included in the assets of the company upon which a return should be computed.

25736 The Master: I will not take any more testimony on the question of cash requirements.

Mr. O'Brien: Exception.

The Master: If you have anything else to ask, ask it. We have spent an hour and a half on that feature this morning in addition to the time spent by Mr. Chambers, and I will not have any more of it.

Mr. O'Brien: I have many angles from which to present this.

The Master: I will not let you present it from any more angles than you have.

25737 Mr. O'Brien: I assume you will pass on the questions as they are asked.

The Master: I will not let you ask any more questions on it.

Mr. O'Brien: I do not consider I am wasting time: I know what I want to ask and I know it is proper cross-examination.

The Master: I am glad you know it. Next question.

Q. Has there been any change in the relations between the Consolidated Gas Company and the Astoria Light, Heat & Power Company, as to all the out-

standing securities of the latter, since the testimony you have given in the old case?

The Master: The question is not allowed; it is not cross-examination of any testimony given by this witness.

Mr. O'Brien: Your Honor, these things all have relation to the needs of the complainant company in the shape of cash, to take care of the bills they pay to the Astoria Light, Heat & Power Company.

The Master: I do not think so.

25739 Mr. O'Brien: That includes seven per cent interest on a supposed investment, and that is all figured in as the present needs, and in that way dragged into this working capital, and I want to show the impropriety of it, your Honor.

The Master: I will not allow the question.

Mr. O'Brien: Can't you see, your Honor, that if he takes into account his cash requirements, moneys he must pay each day or frequently to the Astoria Light, Heat & Power Company for gas transferred or sold to it, the amount paid to the latter includes not only the alleged actual cost, but seven per cent upon the investment

25740 there: that they are really putting into the working capital the payment of returns upon the investment in Astoria.

The Witness: And the coal men, too.

Q. What?

A. And the coal man, too.

The Master: I will not allow the question.

Q. Mr. Carter, did your general answer as to the monthly payment of bills assumed by you in your estimate of working capital include materials of all kinds?

The Master: I will not allow the question.

Mr. O'Brien: Exception.

Q. Mr. Carter, you stated on page 758 of the record in the old case—

The Master: Wait a minute now. Let me see the question; I want to see how it conflicts with anything this witness has said here.

Mr. O'Brien: I am not going to assert that it conflicts with anything he said.

The Master: I will not let you read it.

Mr. O'Brien: I want to ask the witness, your Honor, about the opinion that he expressed at 25742
that time, whether he holds the same opinion at the present time.

The Master: In view of your statement that you do not pretend it is in conflict with anything the witness has said here, I will not allow the question.

Mr. O'Brien: I do not know that I am going to ask him that.

The Master: You have got to know first. You have got to take the position that it does conflict. The only purpose of reading testimony given upon another trial is to show a conflict. Which question is it? 25743

Mr. O'Brien: I can ask him the same question without referring to that record, and say to you, Mr. Carter, now, do you consider that the increase in the volume of business has a very direct bearing upon the company's requirements of working capital in respect to the cash it has to carry?

The Witness: Why, it certainly has.

Q. Would your idea of the cash required increase with the send-out of the company?

25744 Robert A. Carter, Cross.

A. With the increase in the volume of business, of course it would.

Q. With the send-out I am talking about.

A. The sales.

Q. Yes.

A. The company is in the business of selling gas

Q. Yes.

A. Well, it has increased fifty per cent since that testimony was given.

Q. Do not get excited; I am asking you about a simple proposition.

25745 A. It increases the working capital. If it increased a hundred per cent more we would probably require one hundred per cent more working capital in the way of cash, accounts receivable and materials and supplies.

Q. That would contemplate that your labor bill would increase proportionately, too, and your commercial expenses and your salaries, too, wouldn't it?

A. Everything would increase. Our requirements for all purposes would increase.

Q. Take the overheads; and this bears on the testimony as to working capital as well as the commercial expenses of the company concerning which

25746 you have testified. Is it not a fact, Mr. Carter, with any great enterprise, any business, that the overhead expenses decrease as the volume of business increases?

A. No, it is absurd. It is an absurd proposition.

Q. You would not subscribe to it, then?

A. I could demonstrate its fallacy.

Q. Then let me ask you a couple of questions to straighten that out.

The Master: No, I am not going to allow you to ask any questions to bring it out, because you are not asking what you think you are asking at all.

25747

Q. Mr. Carter, Mr. Cortelyou's salary does not increase with the increased volume of business, does it?

The Master: Of course not.

Mr. O'Brien: Are you answering for the witness, your Honor?

The Master: I am not allowing the question. What you mean is the percentage of overhead lessens. That is what you are driving at.

Mr. O'Brien: Your Honor, that is quite understood in my question. The witness understands it.

25748

A. Oh, I could answer that. The cost of carrying an investment in the gas business, expressed in terms of per cent per thousand cubic feet sold, increased one-half since the company started business, Mr. O'Brien. That kind of overhead, yes. The greater use of a given amount of investment, the greater use of a given mileage of mains or plants, the improvement in the efficiency of plant, has reduced our carrying cost from something like seventy cents to thirty-five cents per thousand cubic feet of gas sold per annum since 1884.

The Master: That does not affect your statement about the increase in the requirements for working capital as your business increases?

25749

The Witness: Exactly.

Q. Mr. Carter, do not let us get it confused. Perhaps we agree.

The Master: But you are confusing it.

Mr. O'Brien: Oh, I am not confused at all. I am asking Mr. Carter now if it is not a fact that the percentage—you can express it, if you will, in cents per thousand cubic feet of gas sold—of overhead expenses of any big enter-

prise, including gas industries, should decrease with an increasing volume of business.

The Master: The question is not allowed. It is already answered.

Mr. O'Brien: Your Honor, I want to ask him—

The Master: I said it is already answered.

Mr. O'Brien: You answered it, your Honor.

The Master: And the witness answered it.

The Witness: I stated the fact in respect of a certain kind of overhead expenses. There are
25751 many kinds of overhead expenses.

Q. What would you include in what you have already answered?

A. I included the Company's investments in the plant and equipment required to manufacture and distribute the gas sold by the Consolidated Gas Company to its consumers.

The Master: Generally speaking, Mr. Carter, that would be so of executive salaries, too?

The Witness: It might, your Honor, but not increased ratably. While the president's salary might not vary with the volume, the probability is that his staff of assistants would grow almost
25752 in proportion to the increase in the volume of business. There would not be a very substantial difference; I think it would not cost quite as much ratably, but it would not stand still and it might grow less expressed in terms of rate per thousand or percentage of the whole. That is true.

Q. You would say that of insurance, would you not, and of taxes—the percentage decreases as the volume of business increases, expressed in cents per thousand cubic feet of gas sold?

The Master: It would all depend on whether they were going to use additional plant.

Q. What would you say about that; would you say that of the elements that do decrease in overhead with the volume of business?

A. Certainly if the return on investment expressed in terms per thousand cubic feet diminished, the taxes expressed in the same terms based on the same investment, might. But there is this distinction: so far as insurance is concerned, our insurance is based upon the reproduction cost of our property today, and when I am talking of investment I am talking not of present 25754
investment but of original investment in our plant and equipment.

Q. Your insurance is only placed in spots, is it not?

A. Our insurance covers all of our property, destructible property, and is figured on the basis of what it would cost to replace that property if it were destroyed today. Not what it would cost to replace it several years ago. Therefore the insurance rate does go up, Mr. O'Brien.

By the Master:

Q. Not necessarily because of the increase in 25755
volume?

A. Not because of the volume, but increase in cost.

Q. The changes and additions?

A. The changes and additions increase expressed in terms per thousand cubic feet.

Q. Not due to an increase in business?

A. Not due to an increase in business, but other things.

Q. We are talking about an increase in cost by reason of volume.

A. When you say overhead charges, you cannot

use the term in a general or reckless way, but you have got to deal with the particular kind of overhead charge you have in mind and consider that.

The Master: We have had enough of that.

By Mr. O'Brien:

Q. Well, the clerical end of the office staff, that does not increase in proportion to the volume of business?

The Master: I do not think you heard what I said a minute ago.

Mr. O'Brien: You do not want any more on that?

25757 Q. Mr. Carter, if you testified on page 6361 of the mimeographed copy as follows: "The effect of a diminution in the volume of sales would be to greatly increase the distributing expenses and taxes and expenses of that character and the cost of carrying the investment, expressed in terms per thousand cubic feet, very substantially. In other words, I say we have maintained an average volume of sales of 36,000 cubic feet per consumer per annum. If that volume of sales were cut in half on the average it would mean that the expenses, except the manufacturing cost, would be doubled"—if you testified thus, would not

25758 the converse be true, that with the increased volume of business there would be a diminution of those particular expenses?

The Master: I said I thought the question was sufficiently covered. The fact that Major Clark dug up this question for you does not change my view at all.

Mr. O'Brien: That sarcasm does not disturb me a bit, your Honor.

The Master: The question is not allowed.

Mr. O'Brien: You can make your ruling and I except to it, only I may say that the record is a mirror.

The Master: All right.

Mr. O'Brien: I will refer to it in our summing up, and I am going to frankly tell you what I will tell the District Court when it comes before them.

The Master: I do not care what you tell the District Court.

Mr. O'Brien: I will do it with all respect, and hope not to run the risk of being held in con- 25760
tempt.

The Master: I always have in mind who is talking when the thing is said, and perhaps the District Judge who hears it will likewise have it in mind. Also who it is said about, because I think they all know us. Now, if you think that will get you anywhere, you go to it, as far as you like. My own judgment is that you will probably point out to the Court above where I have erred in my conclusions.

Mr. O'Brien: I want to say to your Honor right in regard to that question, as illustrative of some of the situations we have had in this case, 25761
I undertook to ask the witness a question, it was a very proper question in connection with his testimony on cross-examination, I think, and you undertook to give the answer, and it is hard to say whether the record would bear the answer of the witness and how far the witness assented to what your Honor had said, and the last question just brought it out clearly, using the words of the witness himself, I think, and was perfectly proper and I think it ought to be allowed. I note an exception to your Honor's ruling.

Q. For the purposes of your estimate of working capital, Mr. Carter, did you use an inventory of all supplies and materials on hand of coal, coke and all other manufactured products?

The Master: The question is not allowed, the subject-matter having been sufficiently covered.

Mr. O'Brien: I know that was gone into, your Honor, but I have some few questions to ask on that subject, to find out what inventories were used and where they are.

The Master: I will not allow that.

25763 Mr. O'Brien: And he may have received copies of them, and who made them up.

The Master: I will not allow it. You may note an exception to my ruling not permitting you to ask the questions indicated.

Q. Is it a fact that your inventories are made in January and February, Mr. Carter?

The Master: Not allowed.

Mr. O'Brien: Exception. I except to your Honor's general ruling.

The Master: Yes, I noted your exception.

Q. Mr. Carter, when did the electric business begin to appreciably break in on the gas business of the

25764 complainant company?

A. What do you mean by appreciable?

Q. I take it from your testimony in reference to the extensions of the appliance business and development of a utilization department that the consumption of gas fell off.

The Master: For lighting purposes.

Q. (Continued.) For lighting purposes, and that rapid decline owing to the development of the electrical business made it necessary for you to make searching examinations and develop in every possible

way the use of gas commercially, industrially, domestically, through the extension of the appliance business. I would like to find out from you the period when that rapid decline in the then customary uses of gas began?

The Master: A rather complicated question which probably means, when did electricity take the place of gas for lighting purposes?

A. It began doing so in 1885. I think in 1883 the electric companies were furnishing electric light and lights free of charge for experimental purposes, in order to give the public an opportunity to become 25766
familiar with them, to learn the advantages of illuminating by electricity from the standpoint of the electric lighting companies, and I think in 1884 they began charging for electric lighting, and people began using it, and the revenues of the electric companies began developing from 1885 on. Of course the development of that business was more or less slow because it involved the extension of a distributing system, and it involved a great deal of canvassing, advertising, exploiting work.

The Master: When did it begin to be felt?

The Witness: It began to be felt in the '90's.

The Master: That is an answer to the question. 25767

Q. When did you first institute the utilization department?

A. The utilization department was only a centralizing of activities which had been going on right straight along, Mr. O'Brien. We did not begin developing the utilization of gas for domestic and industrial purposes when the utilization department was organized. It was going on right along before then. The organization of that department simply served

*to centralize* those activities and to continue perhaps more effectively what had been going on right straight along prior thereto.

Q. When did you first begin to feel that it was a matter of life and death to the gas business of the complainant company, and the necessity of developing to its fullest extent the appliance business?

Mr. Ransom: Objected to. He has not said it was a matter of life and death.

The Master: I will allow it.

Mr. Ransom: Exception.

25769 A. I think that in the late nineties the necessity for developing the utilization of gas for other than illuminating purposes was realized by the companies, and the active exploitation of gas using devices was begun in the nineties.

Q. Your view of it was that unless you did carry on this intensive development of the appliance business through promoting and canvassing work, and advertising, and through the utilization department that in time the consumption of gas would fall off to a minimum that would mean the company's practically going out of business?

25770 A. Well, I don't think we ever apprehended the company going out of business. I do not believe that I personally experienced that apprehension. That the volume of business might diminish, that the cost of distributing gas might increase in terms per unit of gas delivered, I think that was apprehended.

Q. About what time?

A. I think in the nineties, the late nineties.

Q. And from that time on this intensive work on appliances began?

A. Yes, we had a gas appliance sales and canvassing department working very actively in the late nineties.

Q. And as between the period 1905 and 1919, would you say just what the increase in the number of appliances rented and sold has been?

Mr. Ransom: Objected to, that was specifically answered.

The Master: I think it has been answered.

Mr. O'Brien: I know he gave us figures on it, but the witness could give us—

The Master: The question is not allowed.

Q. Was that need of speeding up the appliance business, and of extending the utilization department, felt at any period more than at any other during the last fifteen years? 25772

A. I think that during the last twenty years the company has felt very keenly the importance of developing gas utilization, and has employed every means at its command to accomplish that end. The utilization department was just one phase of it, and simply, as I have stated, centralized a certain branch of that promotive work, namely, the canvassing of the appliance market for the best devices which the company could handle either on sales or on a rental basis, and could recommend to its consumers being safe and economical and efficient; but prior to that time they had been doing that sort of thing, and had been very actively canvassing the use of such appliances as were then on the market. The development every year of new means in the uses for gas for a number of years has been quite remarkable, and we consider that we have contributed to it in no small degree. 25773

Q. Then that work of developing the appliance business has included the employment of a large number of men and women to inspect the appliances and to inspect the complaints, has it not?

The Master: That is perfectly clear on the record.

A. It has involved the employment of experts for that purpose.

Q. Mr. Carter, will you state how many complaints annually from the users of appliances have been investigated and inspected by the employees of the company?

Mr. Ransom: I object to that as immaterial and incompetent.

The Witness: I will let the witness answer if he knows.

Mr. Ransom: Exception.

25774 A. I don't know. I haven't any figures or statistics on that subject. We do not wait for complaints to be made to use our inspectors and our demonstrators. We anticipate any complaints. It is to our great advantage to have the appliances used and used to the greatest advantage to the consumer. Consequently we maintain a staff of expert inspectors and demonstrators who are at work all the time. When a new appliance is installed an inspector is sent to go over the installation and find if it is properly made, to see that the appliance is properly utilized by those who have purchased it or rented it. If it is a domestic appliance a demonstrator is sent to show how the

25776 appliance may be used by the customer most effectively and most economically.

Q. Well, in connection with the statistics that you have collated on this question of appliances did you collate data showing the number of annual complaints inspected by the company, complaints concerning appliances?

Mr. Ransom: Objected to as immaterial and incompetent and as having no bearing on the issues of the case.

The Master: I will allow it.

Mr. Ransom: Exception.

25778

A. No, I did not.

Q. Do you recall Mr. Addicks' testimony before the Public Service Commission—

Mr. Ransom: I object to that as immaterial and incompetent.

The Master: He has not finished.

Q. (Continued.) You were present in proceeding No. 2276, in the matter of the hearing on the motion of the Commission as to the quality and pressure of gas manufactured, distributed and sold by, and the interruptions to the service of the gas corporations within the First District?

25777

A. I was not personally present, Mr. O'Brien.

Q. You were present part of the time during Mr. Addicks' testimony?

A. No, I don't think I was there when Mr. Addicks testified.

Q. Did you furnish him the data in that proceeding in regard to the large number of complaints that were inspected by the company?

A. Personally I did not. I judge that he obtained it from the commercial department, which is under my jurisdiction.

Q. Well, what he produced there had been gathered together from official sources in the company's offices?

25779

Mr. Ransom: I object to that as immaterial and not the proper method of proof, and not cross-examination.

The Master: I will let the witness state whether he assumes that he got it from the records of the department.

A. I presume so.

Q. Now, Mr. Carter, having charge of the accounting system of the complainant company, have you ever arranged your accounts in such a way as to show all

of the expense entailed in the appliance business, so that at any given time you might determine the cost of appliances, the handling of the same, the renting of the same, the selling of them, the inspection of them, the installing of them, and the incidental expenses in connection with the carrying on of this merchandising business, and on the other hand the returns to the company from the rentals and from the sales? Have you ever kept such accounts?

Mr. Ransom: That is objected to.

The Master: Do you mean, Mr. O'Brien, as a

25781 separate and distinct enterprise?

Mr. O'Brien: Yes.

The Master: Not in any way connected with any other department of the company's business?

Mr. O'Brien: Yes, separate accounts.

The Master: I will let the witness state whether he has or has not.

Mr. Ransom: Exception.

A. We have not, and I might add—

The Master: No, don't add.

Q. Well, Mr. Carter, has the company at any time done that?

25782 Mr. Ransom: Objected to as immaterial and not pertaining to any issue in the case.

The Master: I will let Mr. Carter answer that.

Mr. Ransom: Exception.

A. No.

Q. Has the company and the accounting department particularly ever made an investigation to gather together all that detail of cost and expense of every kind and nature entering into the appliance business with a view of determining the net revenue from the appliance business?

Mr. Ransom: Objected to as immaterial.

The Master: You mean by that whether the accounting department has attempted to segregate from other items of the company's operations and business in such a form as to take the appliance business out of it as an entirely separate and independent enterprise?

Mr. O'Brien: Yes, how much money they were making or using in that business.

The Master: I will let him answer.

Mr. Ransom: Over my objection you set January 5th as the time for the beginning of the defendants' case, and now they are calling Mr. Carter. 25784

A. The accounts furnish a good deal of information on the subject—

The Master: No, listen to the question. Has your accounting department ever undertaken to set up the appliance as a separate business?

The Witness: I have had tabulations made, not on the books—

The Master: I mean, have you had tabulations made?

The Witness: I have had for my own information tabulations made in an endeavor to determine the extent to which the profit on the sale of appliances, and the rentals obtained from appliances rented, covered a return on the investment in appliances, and is applicable as an offset to the expenses of doing an appliance business in connection with the gas business. 25785

The Master: Next question.

Q. Are those reports extant, are the calculations made extant?

A. I should rather surmise I have them in my files now; in fact, I am sure I have them.

Q. Can you say why the company has never set up accounts separately covering all these expenditures involved in this particular business and of the revenue from it?

The Master: That I won't take.

Mr. O'Brien: I will state, your Honor, the purpose of the question, it is perfectly proper—

The Master: I know you think it is perfectly proper, but it is argumentative and leads us nowhere, and is not proper cross-examination. Therefore, I will not take the question.

25787 Mr. O'Brien: I have in mind, in order to show the propriety of the question, I have in mind the ruling of the United States Supreme Court in one of the Minnesota cases.

The Master: Well, this is the State of New York in this case.

Mr. O'Brien: Where they stated in reference to the company in question the company did not keep a separate account of the interstate and intrastate business. It should have done so and the Court made certain deductions. Now, I am giving the witness an opportunity to offer any reason as the head of the accounting department

25788 and as an officer of the company, why they failed to do that, why they failed to have that done.

The Master: I won't take it.

Mr. O'Brien: That they might determine and keep a permanent record of the net loss or the net revenues made by engaging in that extraneous business.

The Master: I won't allow it.

Mr. O'Brien: Exception.

Q. When you said that you received reports, and you had the account of all the companies, the affiliated

companies, you included in that the Edison Company and the United Electric Light & Power Company?

A. Yes.

Q. These accounts come to you from time to time, and you are in touch with the detail of them?

A. They come to me month by month, and I am in very close touch with the detail of all of them.

The Master: You will bear in mind, Mr. O'Brien, that that was part of your cross-examination. It was not part of his direct.

Mr. O'Brien: It was testimony brought out by Judge Ransom, your Honor. 25790

The Master: I beg your pardon.

Mr. O'Brien: I won't stop now to show your Honor where it is brought out, but it was brought out on the direct testimony, and brought out by Mr. Ransom.

The Master: Well, you show it to me. In fact, I think it was asked by you this morning.

The Witness: Yes, it is.

Mr. O'Brien: But during the direct—

The Master: You show me some things on the direct.

Mr. O'Brien: I have in mind that on the direct it was brought out. 25791

The Master: Show me something in the record. You asked it this morning.

Mr. O'Brien: Did your Honor have in mind that I was endeavoring to cross-examine him on something that was brought out on cross-examination? I did not intend to do that.

The Master: Go ahead. I am just directing your attention to it.

Q. You are not an officer of the Edison Company?

The Master: Question not allowed.

Mr. O'Brien: Exception.

Q. In what capacity do those reports come to you from the Edison Company and the United Electric Light & Power Company?

The Master: Question not allowed.

Q. Will you state at what time the Edison Company was taken over by the complainant company?

Mr. Ransom: Objected to.

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Will you state how much of the stock of the Edison Company and how much of the United Electric Light & Power Company is owned by the complainant company?

25793

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. As an officer of the United Electric Light & Power company are you acquainted with its activities?

The Master: Same ruling.

Mr. O'Brien: Exception. Your Honor, I ask that I be allowed to ask these questions.

The Master: The fact that you put the questions is a request that you be allowed to ask them.

Mr. O'Brien: Your Honor, I would like to ask your Honor if I may, why you are excluding them?

25794

The Master: No, I won't discuss it.

Mr. O'Brien: It may save the Court's time if I know what you have in mind.

The Master: I have said all I intend to say on the subject. Question not allowed.

Q. Has the Edison Company, Mr. Carter, and the United Electric Light & Power Company, a utilization department?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Will you state what amount is annually spent by the Edison Company and the United Electric Light & Power Company in its development of new business?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Its canvassing expense, promotion expense, publicity expense, advertising expense, utilization department expense, if it has such department.

Mr. O'Brien: Exception. Your Honor, we crossed the line together at that time.

Q. What officers of the complainant company not already named are officers of the Edison Company and the United Electric Light & Power Company? 25796

The Master: Question not allowed.

Mr. O'Brien: Exception.

Q. Do you sit in the councils of both these companies or either of them?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What has been done in the shape of expenditures of money and extensions of their promoting department by the Edison Company and the United Electric Light & Power Company, to extend their business, since they came under the control of the complainant company? 25797

The Master: Same ruling.

Mr. O'Brien: Exception. Your Honor, I would like to ask if you are ruling these questions out on the ground that they are separate entities, separate corporations.

The Master: Ask your questions.

Mr. O'Brien: I would like to ask the basis of your Honor's ruling, so I may know how far to take up the Court's time.

The Master: I think you know, in view of the fact that you took an exception before I ruled on a question.

Q. Has any investigation ever been made, Mr. Carter, any intensive study been carried on by the officers or employees of the complainant company to determine how far the extension of the Edison Company's business, and of the United Electric Light & Power Company's business, was invading and making inroads upon the gas business of the complainant company?

25799 The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Who determined the allotment of space in the office building which gives the Edison Company the portion of the ground floor which they have for display purposes, and the particular floors that they use for office space?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Was any policy ever determined upon by the complainant company's officers as to how far the business of the electric light companies, the Edison and the United, should be promoted and extended so as

25800 to bring out the largest return to the complainant company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Was there any policy ever determined upon, so far as you know, by the officers of the complainant company, its Board of Trustees, its executive committee, or any other group of officers, with respect to the conducting of the two lines of business so that the gas making industry of the complainant company might have a chance to progress and prosper?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. How much money, Mr. Carter, was expended by the complainant company to take over the Edison Company?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. How much money was expended by the complainant company in order to take over the United Electric Light & Power Co.?

The Master: The same ruling.

Mr. O'Brien: Exception. 25802

Q. Was that money used in the purchasing of these companies, the whole or parts of their stock, to any extent, the earnings of the complainant company in the gas making business?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Have any moneys produced in the complainant's business been used at any time to extend or develop the Edison Company or the United Electric Light & Power Company, to promote their business?

The Master: Same ruling.

Mr. O'Brien: Your Honor, I feel lonesome without some response. 25803

The Master: I said same ruling.

Mr. O'Brien: Exception.

The Master: John, somebody said a long time ago that there was one fine thing about you, and that was your saving sense of humor.

Mr. O'Brien: I think you will see how these things loom up.

The Master: I don't see it at all.

Mr. O'Brien: You are going to make some law in this matter, your Honor.

The Master: I am making it right now by ruling out your questions.

Mr. O'Brien: Couldn't you take them provisionally and let the higher Court use the data if—

The Master: No, if the higher courts think this kind of examination is useful they will have to send it back to another master.

Mr. O'Brien: Your Honor, in order that you may see the propriety of my questions, the whole subject was opened up in the examination of the
25805 witness Carter.

The Master: Where?

Mr. O'Brien: Take the pages in the mimeographed record, page 6252, over to and beyond page 6354. That whole discussion gets into the development of the electrical and the gas business, the effect of the development of the electrical business upon the gas business, the profit to each, the returns from the electric light business. At page 6363 the witness says:

"During this period the gross revenues of the electric light company operating in the Borough of Manhattan alone increased $1,000,000 per
25806 annum."

Prior to that, on page 6355, the witness said:

"No, they will switch to something else, your Honor. They switch to electric illumination, and we have to make up that loss in sales of gas for illuminating purposes by sales of gas for domestic and industrial purposes. The sales of gas per consumer are no greater today than they were in 1884. We sold 30,000 cubic feet per consumer per annum in 1884, and we are selling only 36,000 cubic feet per consumer today. In 1884 I do not believe there was a gas appliance in use of any

sort, kind, class, description or character, because gas companies then were known not as gas companies but as gas light companies."

The Master: I am going to stand on my ruling. I think I should make the same ruling if this company had two departments, an electric light department and a gas light department, I should still be of the opinion that it was its duty to the public to advocate the use of electricity to the fullest extent, and in doing that to introduce the use of gas to make up for int. That would be my view of it. 25808

Mr. O'Brien: Well, I just want the record to give us enough data to aid the Court in the event of their concluding that the manner in which—

The Master: I will do this if you want it, and if you will let me get it for you in one question so you can have the basis for your argument. I will let you get from Mr. Carter the statement, if it is not already in, as I think it is, that this gas company controls the Edison and the United, if that is the fact, for the basis of your argument.

Mr. Ransom: It has already been shown. I have offered to show the details.

The Master: I think so, but I will give Mr. O'Brien that basis of argument if he wants it. How about that, Mr. Carter? 25809

Q. How much of the stock do they control?

A. We own practically all the stock of both companies.

The Master: All right, now you have that for your argument. The situation is precisely the same as if this company had two departments, an electric light department and a gas light department, and I should still be of the opinion that it

was its duty, operating two independent departments, to do everything that would increase the business of each department, and handling that business in such form that if one department encroached on the other they would try to increase the business of the other which was encroached upon.

Mr. Ransom: I think that would be true if it were the situation set forth in the Court of Appeals ruling, but that is not this situation.

The Master: That is why I won't change my ruling.

25811

Mr. O'Brien: Whether the ruling laid down in the Municipal Gas Company case applies in a given situation or whether it does not, it is perfectly proper on cross-examination, the witness having gone into that matter, for me to bring out, he having said that he knows all about the accounts of the Edison Company and of the United Electric Light & Power Company, he having testified that the complainant controls both of those companies, to bring out how far they have developed the one company to the prejudice of the other. You see the point, your Honor?

25812

The Master: But, Mr. O'Brien, I was trying to make clear to you that with the record as it stands, and with the ownership of practically all the stock of these two electric lighting companies, I will assume that they have done everything that a business man would do independently to increase the use and sale of electric light and power; I will assume it as far as you want to argue it. Now, what is the use of lumbering up the record?

Mr. O'Brien: Your Honor, so that we may pass on to other questions, will your Honor in

your ruling assume—the ruling of course is against the proposition I am asserting of the propriety of the evidence—that the Edison Company or the complainant company, because it gets all the revenues of the Edison Company—

The Master: Practically.

Mr. O'Brien: Practically, and practically all the revenues of the United Electric Light & Power Company—

Mr. Ransom: All of the revenues?

Mr. O'Brien: Yes.

Mr. Ransom: That would be surprising. 25814

Mr. O'Brien: They getting all its revenues, and getting this immense return as to the Borough of Manhattan alone of eleven million dollars a year—

The Witness: That is nonsense.

Mr. Ransom: Perfectly absurd.

The Master: Where do you get eleven million dollars?

Mr. O'Brien: The testimony of the witness.

The Master: What page?

Mr. Ransom: That was the increase in the gross revenues. Of course it costs money to make electricity, doesn't it? It is like gas. 25815

The Master: No, they get it out of the clouds, don't they?

Mr. O'Brien: Whatever it may be, the principle involved is the same thing. It may be eleven hundred dollars, or eleven thousand dollars, for the purpose of my statement.

The Master: You were asking me something. Go on.

Mr. O'Brien: I say to your Honor and to Brother Ransom that that is not clever, it is old stuff, endeavoring to get in on me and interrupt

my question to destroy the continuity of it, expecting that I will forget it. When you see Ransom talking it is always an indication that there is a ticklish proposition on before the Court. It is like a red flag, the old scarecrow down in the cornfield up in Chautauqua County.

Mr. Ransom: No, trying to interrupt the permanency of his discourse.

Mr. O'Brien: Will your Honor assume in making your ruling that the complainant company controlled both of these companies practically entirely, and that these companies are making an immense revenue—

25817

The Master: I will assume they are making money.

Mr. O'Brien: And that it is, financially speaking, better for them to develop and push along the development of the electrical business because they get a larger return, bigger and cheaper profits at lesser expense, and that they are developing that to the detriment and disadvantage of the other thing they control, the gas making industry.

The Master: The disadvantage and detriment in what way?

25818

Mr. O'Brien: Well, I don't know how to picture it to your Honor unless you take the Siamese Twins. If instead of one little baby up in your house you had two, and if they were Siamese Twins or suppose you had the Ransom baby and the Gilbert baby together as Siamese Twins, and you gave one of them Walker-Gordon milk, and the other side of this poor little bunch of humanity you didn't give anything at all—

The Master: Which kid do you think would get the Walker-Gordon milk if I was around?

Mr. O'Brien: Now, your Honor, I say that the situation exists in this case—

The Master: What I am asking you to tell me is this. You are asking me to assume that they have developed the electric light and power business to the detriment and disadvantage of the gas business.

Mr. O'Brien: Yes.

The Master: What I would like to have you tell me is in what respect they have injured the gas business. I will assume that they have developed the electric light and power business, I 25920
will assume this, and I will take Mr. Carter's statement for it, that they have developed the electric light business to the point where the gas used for illuminating purposes is cut down to nearly one-half of what it used to be. Isn't that your statement?

The Witness: I should say that, at least.

The Master I will assume that.

Mr. O'Brien: Will you assume that the electric light business is immensely profitable?

The Master: I will assume that it is profitable.

Mr. O'Brien: Will you assume that they are making nineteen thousand dollars a day? 25821

The Master: No.

Mr. O'Brien: Well, put it at some figure then.

The Master: No, I won't assume any figure, I will assume it is a profitable business. Otherwise the Gas Company would not stay in it, and the Electric Light Company would not stay in it.

Mr. O'Brien: Your ruling would be the same still, that the Gas Company is not entitled to the use of any of these profits in connection with the development—

The Master: No, I am not ruling about profits. I am ruling whether I should fix the price of gas so as to make up for the loss of money because they are making money out of the electric light business.

Mr. O'Brien: Your ruling is irrespective of whether the moneys earned in the gas business in other years was used to buy the Edison Company or the United Company?

The Master: Yes.

Mr. O'Brien: That is your ruling?

25823 The Master: Yes.

Mr. O'Brien: And you are assuming that in the Edison Company they may have turned in all kinds of money to promote the lighting business proportionately far greater than in the Consolidated Gas Company.

The Master: I will assume anything you want to argue from the facts in the record.

Mr. Ransom: Many of the facts which have been stated are very far from the actuality.

The Master: Let us get along.

Mr. O'Brien: The Court's position, I take it, is—

25824 The Master: You have got clearly on the record that the Consolidated Gas Company owns practically all of the stock of the Edison Company and the United Electric Light and Power Company; that they have developed the electric business to the point where they cut down the demand for illuminating gas to about one-half—one of the best things ever done for the people of this country. Go ahead.

The Witness: The public demand that, we don't have to canvass it.

The Master: I say that is one of the best things you ever did, if you have the public educated to the point of doing that. I would like to see this Gas Company get electricity to that point where we would not have any gas at all.

Mr. O'Brien: Your idea is that it is a dying industry anyway?

The Master: What?

Mr. O'Brien: The gas business.

The Master: Apparently not. Apparently the efficiency of this gas company with their utilization department and promotion department has 25826
been such that they have managed to find uses for gas which were never dreamed of before, for which I think they deserve credit, not necessarily 80 cents or 90 cents per thousand cubic feet of gas. That is a different proposition altogether, as to how much they ought to get for their product. The fact that they have managed to have gas used for purposes for which it was never used before deserves credit and not condemnation. They do not deserve any more money for it, they do not deserve an undue profit for it, that is an entirely different question, as to what is a fair return. 25827

Mr. O'Brien: I appreciate, I think, and I understand the Court's view on it. It is pretty clean-cut. It assumes that on the conditions I have named the ruling would be the same that they cannot recoup the losses in the gas business from the profits in the electric business, no matter how much they push one as against the other.

The Master: That is as I understand the law, and that is the law as I shall take it.

Mr. O'Brien: Well, I call your Honor's attention to the fact that the Municipal Gas Company decision was rendered and the observations made by the Court in that case—

The Master: What Judge made those observations?

Mr. O'Brien: Now, don't bow down before that—he is a worthy character. I believe that Judge Cardoza is an able man, but I think your Honor's enthusiasm over that decision is extreme.

The Master: All I can say about it is this, that
25829 I have no doubt on the subject, independently of the conclusion arrived at by Judge Cardoza, I should take his judgment.

Mr. O'Brien: I was going to call your Honor's attention, when you lighted up your visage, affected by the approach of the name of Judge Cardoza, I was going to say that that decision was rendered—it was not a decision, it was more or less an observation—was rendered on a meagre complaint.

The Master: I would rather take Judge Cardoza's observation on a meagre complaint than some other Judge's well considered and thought-
25830 ful opinion upon an elaborate complaint.

Mr. O'Brien: But the facts there presented only a bald skeleton statement of the situation. Now, we have conditions here that are not in that record.

The Master: Let us get along. We have had enough.

Q. Now, as to the development of the industrial uses of gas, Mr. Carter, may I ask you if you make a different rate where manufacturing concerns consume large quantities of gas?

A. No.

The Master: It is 80 cents per thousand cubic feet on the Island of Manhattan?

The Witness: Yes.

The Master: Large or small?

The Witness: Large or small.

Q. Have you in your account segregated this particular branch of the business so you are able to say how it has been developed and how much money is coming in, the use of gas in industrial purposes, in factories and hotels and clubs?

A. We simply know that gas used in certain buildings is used exclusively for industrial purposes. In a 25832
hotel for example, in the National Biscuit Company, in the large clubs, large restaurants, it is used only industrially, but we do not segregate those accounts or treat them in any way differently from the way we treat all other accounts.

Q. Well, your commercial expense in connection with those accounts is much less than it would be with a given number of private consumers?

A. Ratably yes, naturally so. The consumer that is paying us $25,000 or $30,000 a year does not cost us as much as one who is paying us $25.

Q. What part of the appliance business is taken care of, I mean the repairs particularly, is taken care 25833
of by the affiliated companies?

A. The repairing of appliances—

The Master: We have had that enough in this record. I won't allow the question.

Mr. O'Brien: The witness has gone into the question of expenditures of the appliance business and the profits from it—

The Master: I will not allow it.

Mr. O'Brien: Exception.

Q. Will you state how much is paid annually to the Standard Gas Light Company for repairs to appliances?

The Master: I won't allow it. Get it from the books.

Mr. O'Brien: Can't your Honor see that where they have these various branches of their work in this unparalleled interlocking of companies, the opportunities for swelling accounts and charging up inordinate expenses, and all that?

The Master: Your experts will find it if there is.

Mr. O'Brien: I submit it is a perfectly proper question for me to ask this witness, who has undertaken to go into the details of the profits of
25835 the appliance business.

The Master: I won't allow the question.

Mr. O'Brien: Exception.

Q. Do you know what they are?

The Master: Not allowed.

Mr. O'Brien: Exception.

Q. Have you made a study of that for the purpose of testifying in connection with appliances in this case?

The Master: A study of what?

Mr. O'Brien: The witness has come in here, with the questions put by brother Ransom out of
25836 the hothouse collection of interrogatories he has been asking, a lot of details about the appliance business. Now, in order to show that it has been a wonderful business, that it has been a life-saver for the company, that the company would have expired long ago without it, and that it has been a wonderful thing, he has asked those questions. Now, I ask him about a separate organization, whether there is a net revenue, and I asked him whether in connection with that examination he has brought here in his books of data anything that will tell us the amounts of money they are

paying over to an affiliated company in connection with a certain branch of that business. Isn't that perfectly proper?

The Master: I won't allow it.

Mr. O'Brien: I take an exception to your Honor's ruling.

Q. Mr. Carter, in what year was the holder installed at 132nd Street?

A. I do not recall exactly. I should say twelve or fifteen years ago.

Q. The company at that time owned property at Inwood?

25838

A. Yes.

Q. You at that time had your holders, the same number as existed today at 111th Street?

A. Yes.

Q. The same number of holders at 99th Street?

A. Yes.

Q. 65th and 66th Streets, west side?

A. I think we had more holders then than now at 65th and 66th Streets.

Q. And you had the holders in East 62nd Street?

A. Yes, sir.

Q. What was the purpose of establishing a holder at 132nd Street?

25839

A. To meet the requirements of that section of the city.

Q. What section was it designed to cover?

A. The section lying east and north of it, and I am inclined to think south of it also.

Q. Did you go over the plans at all at that time?

A. No.

Q. Did you take part in any of the company's councils when they discussed the matter and arrived at their plan for that project?

A. I have no recollection of the incident or having done so.

Q. Was there a report made by Mr. Bradley or anybody else at that time before it was actually started, showing the need of the holder station there and the territory which ought to be covered by such a holder?

A. Unquestionably it was recommended by the engineering department. Just what form that recommendation took I do not know.

Q. At that time the Harlem section from 125th Street north was not built up at all, was it?

A. The Harlem section?

Q. Yes.

25841 A. From 125th Street north?

The Master: Mr. O'Brien is just on the wrong side of town.

The Witness: It struck me so, your Honor. The east side of town had been built up, even before my time.

Q. Take the territory, if you are acquainted with the territory, Mr. Carter, north of, say, 130th Street?

A. On what side of the city?

Q. Running east and west and north of that, particularly along the Harlem River front. That was vacant, was it not?

A. How long ago?

25842 Q. At the time that the 132nd holder was projected.

A. Along the Harlem? I do not think that along the Harlem south of perhaps—

The Master: The Harlem River at 138th Street and north, Mr. Carter, so you will have it clear in your mind, is away over at Second and First Avenues.

The Witness: Yes, I was going to say that did not enter into our consideration at all.

The Master: It does not come over or across to Seventh and Eighth Avenues until it gets to 155th Street or thereabouts.

The Witness: I should say south of 175th Street, or thereabouts, the conditions along the Harlem River were not considered particularly in connection with this holder.

Q. Do you remember that territory, Mr. Carter, at that time?

Mr. Ransom: Objected to as immaterial.

A. What territory are you talking about? Describe it, please?

Q. I am talking about the territory along the Harlem River.

A. Where? 25844

Q. Say from 138th Street north to 155th.

The Master: Did that have anything to do with locating this holder at 132nd Street?

The Witness: No, I should think not. Not at all.

Mr. O'Brien: I did not ask if it had anything to do with it.

The Master: I did.

Mr. O'Brien: I object to your anticipating what may be my next question. I have some questions here that I want to ask.

The Master: Ask questions that will be useful. 25845

Mr. O'Brien: The witness has been called here and I protested that he was not an engineer when he was asked these questions, and yet they qualify him over my objection and accept this man as an engineer on the justification for putting the holder at 132 Street.

The Master: They have not qualified him as an engineer at all.

Mr. O'Brien: I want to ask the witness if that territory in and around 130th Street, Lenox and Seventh Avenues, northward, all along the

25846 Robert A. Carter, Cross.

river front, was not vacant land at the time they installed the holder at 132nd Street.

The Witness: No, sir, it was not.

Q. Do you recall the territory at all?

A. Lenox Avenue, yes. I have traveled over it.

Q. Do you recall the river front?

A. I do not. There is nothing on the river front.

Q. Do you recall how many vacant square lots there are there today?

A. There are just as many as there were twenty years ago. It is the most miserable neighborhood in

25847 New York City on the Harlem River there.

Q. What do you mean by "miserable," the topography of it?

A. Well, its stone yards and refuse piles and junk and everything else along the Harlem River.

Q. An ideal place to put a gas plant, is it not—a gas holder?

A. We did not put a gas plant anywhere near there, or any gas holder anywhere near there.

Q. Would it not, ordinarily be, if you were seeking the aesthetic sentiments of the neighbors, as you did in the Kingsbridge station, an ideal place to put a holder?

25848 A. That was not the neighborhood we were undertaking to supply.

Q. Apart from the neighborhood you undertook to supply, would that not be an ideal place to put it?

Mr. Ransom: Objected to as incompetent, irrelevant and immaterial.

The Master: I will allow it.

A. If we needed a holder in that neighborhood I should think perhaps it might. I do not know. I do not judge the value of that land from the condition I see it in. It may have a very substantial value. It may cost more per square foot than the land that

is occupied now by the 132nd Street holder, but the main point was we did not need a holder there. That is the principal fact.

Q. Mr. Carter, I am speaking now about the availability of the land, irrespective of the engineering problems involved. That was and is still vacant land, you say, the land of goats, tin cans, junk, etc.?

A. Yes.

Q. And you would not do damage to neighbors around if there were not any neighbors there to be annoyed by the noxious smells and other nuisances in connection with a gas house? 25850

The Master: What is the point, Mr. O'Brien; if they wanted a supply base on the west side of Manhattan Island they might have put a holder away over on the east side and connected it with the mains in the west side?

Mr. O'Brien: Yes, your Honor.

The Master: Yes, they might have done that and they might have put it down at Montauk Point, where they would not bother anybody, and as an engineering proposition they could carry it up 130 miles by mains.

Mr. O'Brien: You see, your Honor, the thing I must object to is your entering into a discussion while I am quizzing this witness. 25851

The Master: That is the time to do it.

Mr. O'Brien: If Judge Gilbert were running this company they might have had the holder there and they might not have, I do not know. This witness is brought here to justify the placing of the holder at immense expense at Kingsbridge station, which is really put there to take care of the Northern Union Gas Company and probably would never have been installed there if they did not have to take care of one of these little

25852 Robert A. Carter, Cross.

babies, the Northern Union Gas Company. I want to find out, he having been called; not Mr. Woods or Mr. Bradley, but this man who is the financier, the major-domo of the gas company. They ask him to justify the placing of this thing at Kingsbridge and I ask him what he knows about the territory there and the available sites there at that time.

The Master: I think all he told us was that the engineers said they wanted another holder.

25853 Q. Have you any idea, Mr. Carter, what the population of Washington Heights was when the West 132nd Street holder was installed?

A. No.

Q. You have not gone into that matter?

A. No.

Q. For the purposes of testifying here in regard to the location of the Kingsbridge holder?

A. No.

Q. What was the area of the ground that you owned at Inwood?

A. Oh, very small. I say small—too small, and it was not deemed a suitable site at that time.

25854 Q. The whole of the northern end of Manhattan Island was then virgin field, was it not, and woodland?

The Master: When?

Mr. O'Brien: At the time of the installation of the West 132nd Street holder.

The Master: Whenever that was.

Mr. O'Brien: Whenever that was. The witness has testified about what time it was.

The Master: He said twelve or fifteen years ago. I know the fact to be contrary to that twelve or fifteen years ago, but it may be that that was the fact when that holder was put there.

Mr. O'Brien: Can you not see that I do not want your Honor to testify? I want the witness to testify, because he claims the reasons were so and so, and tries to justify the Kingsbridge holder being there.

The Master: I will let you ask him.

Mr. O'Brien: I want to know what he knows.

By the Master:

Q. When the 132nd Street holder was built the land north of that was a barren waste, or farms, was it?

A. Oh, no, it was not, your Honor, although in 25856
the last ten years there has been enormous development in the upper section and northwesterly section.

Q. Do you remember when the original Broadway subway was opened up through Broadway?

A. Yes.

Q. Do you remember what year it was?

A. I do not remember the year. I remember about the time.

Q. About when was it?

A. I shoud say in 1907 or 1908.

Q. That would be about eleven or twelve years ago?

A. Yes, sir, and since then the development in that 25857
section has been tremendous.

Mr. Ransom: 1904, as I recall it.

The Witness: Completed and operated? I do not know positively.

Q. The elevated road running up Eighth Avenue to 155th Street has been in operation how many years? Since about 1879 or 1880, has it not?

A. Oh, yes, sir.

Q. That section up there started to develop as far back as the 80's and early in the 90's, did it not?

A. Yes, sir.

25858 Robert A. Carter, Cross.

Mr. Ransom: The Riverside Drive Extension was put through—

The Master: That is only eight or ten years ago.

Mr. Ransom: More than that. That was put through prior to 1905.

Q. What was the situation north of 135th Street, from the North River over to, say, Seventh Avenue, Lenox Avenue, when you built the 132nd Street holder, whatever that year was?

A. Broadway and those streets in that vicinity were
25859 not as well built up then as now. The development north of 135th Street right throughout that whole westerly territory there has been very considerable. It was built up and very substantially built up at that time in the vicinity of that holder, but there has been a great deal of development in that territory since that time.

By Mr. O'Brien:

Q. I want you to project your mind back beyond 1909 and 1910, when that mushroom development came in the territory from 125th Street north to 185th. I am trying to gather your mind back to about 1903 or 1904 when the holder was installed.

25860 The Master: When was that holder built, do you remember?

Mr. O'Brien: It was recent. They state in the testimony of the last case "recently erected."

The Witness: Kingsbridge?

Q. No, 132nd Street. Give us as best you can, Mr. Carter, your picture of the territory there and the development in the shape of buildings up to that time?

A. What territory are you referring to?

Q. Take from West 132nd Street north.

The Master: Along the North River—the Broadway and Amsterdam Avenue section, St. Nicholas Avenue and Eighth Avenue.

A. I think that for a distance above 132nd Street, right across to Morningside—well, that would not be above Morningside Park—halfway across the city, that it was pretty well built up in 1905 and 1906. The development I should say north of 155th Street and thereabouts, and along Riverside Drive, I do not recall exactly; but I think Riverside Drive was not completed and opened much before then. There have been a great many structures completed on Riverside Drive north of 132nd Street within a few years. Broadway has developed a great deal, and it was that development there that that holder was designed to 25862
supply, both in the matter of storage and in the matter of pressure regulation. But it is the development far north of that that we are undertaking to meet with this Kingsbridge holder, or rather this Fordham Road and Sedgwick Avenue holder.

Q. In 1902 and 1903, do you know where the Dyckman tract is?

A. Yes.

Q. You know its peculiar topography?

A. Yes.

Q. At that time, 1903 and 1904, that was a waste, was it not?

A. I would not attempt to testify on that subject 25863
very specifically, because it was not one that engaged much of my attention. I did not inspect that territory for the purpose of determining whether that holder was necessary. That was the result of engineering investigation and consideration, and the consideration of the pressure on the lines supplying gas in that section, that controlled the matter of the erection of that holder. I do not know that I even considered what the condition of the development of that territory was, and I am pretty well satisfied that I did not consider it at all personally. I should have been

governed altogether by the opinion—certainly I should have been governed altogether by the opinion of the Engineering Department in that regard.

Q. You did not have much if anything to do with the project, I take it?

A. No.

Q. You had plenty to do without getting into those problems at that time?

A. I knew of it and knew what was projected, and I had no independent opinion upon the subject and no objection to make to it.

25865 Q. Naturally you would not make objections if you first were not charged with some responsibility in connection with it, unless you had some knowledge of the facts?

A. Some independent knowledge which led me to believe that it was not necessary. I did not possess that.

Q. Then you would not undertake to pass judgment now on the availability of the Dyckman tract there for the installation of a holder station at the time that the West 132nd Street holder station was established?

A. I would not, no.

25866 Q. Would you say, as you have spoken about your not having anything to do with the West 132nd Street establishment—would you say the same as to the Kingsbridge holder? Was that a matter outside your domain at the time?

A. Yes, largely.

Q. You did not sit in at the councils of those who determined that it was to be there?

A. Oh, I probably discussed it with the other officers of the company.

Q. In an offhand way?

A. Rather offhand.

Q. Who did have the last word?

A. The executive committee, to whom the proposition of course was put up squarely that the Engineering Department's investigation of the subject and study of the situation had resulted in their conclusion that a holder was required for that section, and that the most suitable location for it would be at that point, in order to meet the demand for gas and in order to regulate the pressure in that neighborhood.

Q. What would the Northern Union Company have done if you had not put the holder at the Kingsbridge station at that time? On what would they have depended for their supply of gas? 25868

A. The Northern Union Company has a holder south of there on Webster Avenue, adjacent to its office, which it has used for supplying that territory, and which was a small holder. The Northern Union bought that piece of ground at Kingsbridge Road and Heath Avenue. I think the expectation was that it would use that for its own purposes. I think it was subsequently to that—they bought it in 1907, and I think it was subsequently to that the development in the adjacent territory in the Borough of Manhattan led to the consideration of the requirements of the Consolidated Company in that section, and to the conclusion that a holder in that location would meet the requirements of the Consolidated Company as well as the Central Union and Northern Union companies. 25869

Q. Of course, you had in mind when you established the holder at Kingsbridge station that you might be called upon to supply gas to the companies in Westchester County?

A. No, I do not think that entered into our consideration at all. I think that was a mere incident. The fact of the mains being connected so that the Westchester Company can obtain some gas from the

25870 Robert A. Carter, Cross.

Northern Union Company or—yes, from the Northern Union Company, is simply an emergency provision, a provision designed to meet the emergency of the Westchester Company for some reason being short of gas. It is very seldom used. It would have been used and could be used whether the holder was there or not, I believe.

The Master: Mr. Chambers wanted to get something on the record before we adjourn. If you have no objection I am going to interrupt at this point. What did you want?

25871 Mr. Chambers: First, I offer in evidence the minutes, pages 1 to 36 of this minute book produced by Mr. Carter. I better make the offer a little clearer than that. I offer in evidence, yes, pages 1 to 36 of the minute book referred to by Mr. Carter, being the minutes of the Trustees of the Consolidated Gas Company, beginning November 10, 1884, excluding, however, the documents which have been offered in evidence by the complainant. Page 1 of the book is blank.

Mr. Ransom: I think we could put it all in.

Mr. Chambers: The offer goes down to the signature of A. E. Gawtry, secretary, on page 36.

25872 Mr. Ransom: What is there between pages 1 and 36 that you do not wish to offer?

Mr. Chambers: I have already offered them.

Mr. Ransom: What is there that you do not offer?

Mr. Chambers: Do you want me to name what I do not offer? The Consolidated Agreement and the Consents of the other Companies, or the meetings of the other companies. There is no use of having them twice.

Mr. Ransom: I offer in evidence the portions which counsel omits.

Mr. Chambers: You have offered them.

Mr. Ransom: I offer them again as they are set forth in the minutes.

The Master: The only point Mr. Chambers makes is that it is a duplication. If there is no objection I will mark the 36 pages as an exhibit.

Marked Defendants' Exhibit AA35.

Mr. Ransom: I may wish to offer some other portions of these minutes.

Mr. O'Brien: I have a few selected passages from that book I would like to have in myself, 25874
your Honor.

The Master: I am asking Mr. Chambers.

Mr. Chambers: I have a paper that I offer, an admission given by William L. Ransom on December 15, 1919, being a notice to furnish certain information. I suggest that that be spread right in the minutes.

The Master: No, it will be marked for identification.

Mr. Chambers: I offer it in evidence.

The Master: It is refused.

Mr. Chambers: Exception. Then I ask that it be marked for identification. Could I read it 25875
in the record?

The Master: No.

Marked Defendants' Exhibit AA36 for identification.

Mr. Chambers: Have you the information that we called for in that paper?

Mr. Ransom: The complainant has already furnished the information that the Deputy Attorney General wanted for the trial.

Mr. Chambers: Is he going to give us the information?

Mr. Ransom: It is available to the defendants as soon as they begin work.

Mr. Chambers: This is something we cannot find out. He declines to furnish it.

Mr. O'Brien: Has your Honor read this missive?

The Master: I do not care what it is; it is a request for information. Mr. Ransom says the information is in the books and available to your experts and that you can go and look at it.

25877 Mr. Chambers: That we dispute.

Mr. Ransom: It is in the books and in the properties. We have burdened the consumers of this company with a great many thousands of dollars in doing work for these defendants, in preparing their case for trial.

Mr. Chambers: We want a date fixed to come here for argument. After we are through with Mr. Carter we would like to have a time fixed for argument.

The Master: I thought I had given you notice that when we are through with Mr. Carter we are going to correct the record, sign the minutes, call back any witness for further cross, have the
25878 motions to dismiss and every possible thing that can be brought up by anyone; and for that purpose I was going to continue these sessions from day to day. We will adjourn to Monday afternoon at two o'clock.

Mr. Clark: I want to ask the Master and Judge Ransom what disposition will be made of the request for information I made at the close of Mr. Teele's examination?

The Master: I assume that Mr. Ransom is disposing of that request as he did the other matters, in the same manner.

Mr. Ransom: The complainant feels that Dr. Webber has discharged his duty in getting this information from year to year, and I see no reason why during our case, having subjected the consumers of this company to such an enormous amount of work in carrying out foolish requests, that it should go any further.

The Master: Well, there is no use of criticising it in that way.

Mr. Clark: You need not characterize it like that.

Mr. Ransom: I will put it, do not perform 25880
the clerical work compiling it for them.

Mr. Clark: It is a matter that is in complicated form in the books, and Dr. Webber's men find it hard to dig it out, particularly for the Public Service men to go over the accounts. We thought that Mr. Teele and his men would more readily find those facts than Dr. Webber's men could and save us time in the presentation of this case.

Mr. Ransom: Dr. Webber's men have been familiar with these books for years; Mr. Teele's men started in on these books comparatively recently. Mr. Teele's men have all they can do pre- 25881
paring for other cases that we are going to try.

Adjourned to Monday, December 15, 1919, at 2 o'clock P. M.

Last Complainant's Exhibit No. 403.
Last Defendants' Exhibit AA36.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 25885

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 15, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 25886
MR. O'BRIEN, of Counsel for defendant Swann.

ROBERT A. CARTER, resumes the stand:

CROSS-EXAMINATION CONTINUED BY MR. O'BRIEN:

Q. Mr. Carter, have you gone over the vouchers for the years 1918 and 1919, so that you might be able to tell us in general terms as to when the company has paid its bills?

The Master: I think that has been sufficiently covered; I will not allow the question.

Mr. O'Brien: Exception. 25887

Q. Did you go into the question as to when the company actually paid bills during the period prior to December 31, 1918, for that year, 1917 and 1916, with a view to formulating your ideas as to working capital?

The Master: I think that subject is sufficiently covered by the same ruling.

Mr. O'Brien: Exception.

Q. Did you give any consideration in formulating your views as to working capital to the amount of money that you get out of prepaid meters?

25888 Robert A. Carter, Cross.

The Master: That is sufficiently covered.

Mr. O'Brien: Exception.

Q. Did you in formulating your ideas as to what would be a fair estimate of working capital for the company as of December 31, 1918, make a study of the operating expenses for that year?

A. I fixed that amount as the company's working capital all the year round, not as of any particular date.

Q. All the year round 1918?

A. 1918 and 1919, and perhaps, if the business
25889 grows, substantially more in 1920 or 1921 or 1922

Q. Did you consider the operating expenses in connection with it?

A. I considered only the question of the company's requirements for its current purposes, whatever they might be, in connection with its gas business.

Q. I am trying to find out now just how you started in your sanctum sanctorum to get up these figures, if somebody handed them to you, whether they did, if you started and figured out this amount yourself, what you had when you started, and how you gathered together these figures as your estimate of working capital?

25890 Mr. Ransom: Objected to as already covered.

Q. I ask you now whether in that connection in the first instance you did get together data on the operating expenses for any of the years surrounding that period, to determine your estimate of working capital?

The Master: I will allow this question.

A. I stated before that my determination of the amount of working capital required was based upon my experience and observation of what the company has required for that purpose for a great many years.

Q. That is as specific as you want to make the answer, is it?

A. I considered, for example, that the company's growing business would necessarily involve a larger amount of cash than it did twelve or thirteen years ago, or fourteen years ago. I took into consideration the fact that an increase of fifty per cent in the company's sales would involve the requirement of a greater amount of provision for the item of "Accounts Receivable," for example.

Q. Between what dates did you assume that fifty per cent increase in the sales? 25892

A. In the volume of sales?

Q. Yes.

A. Between 1905, the year under review in the previous case—as a matter of fact, I think the exact date was the twelve months ending October 31, 1905. In the matter of materials and supplies, I took into consideration, of course, the fact that the cost of all of the materials and supplies required in the company's operations had enhanced very substantially since that time, at least fifty per cent and in some cases a substantially higher percentage. Those are the considerations that led to my adoption as a proper provision to be made for working capital the $4,625,000, 25893 which happened to be approximately the amount carried in our "Accounts Receivable" as of December 31, 1918, and in our materials and supplies account, and something more than was carried in our cash account as of that date.

Q. In reality, then, you went back to the figures of 1905, and that was your starting point?

A. No, it was not.

Q. You built up from that—

A. (Interrupting.) I went back of that.

Q. (Continued.) —and assumed that the sales

were fifty per cent more, and you ought to add fifty per cent more than what you had at that time estimated as the working capital; is not that it?

A. No, that would only be one consideration given to the subject. As I explained to you when you were questioning me on this subject before, the company's cash statement comes to my desk every day and has done so for a great many years. I am constantly in touch with the company's requirements and the amount of cash that it carries. As I explained at that time, if we ever get below a million dollars I feel that we are

25895 sailing very close to the wind.

The Master: Mr. Carter, I am just going to ask you to answer these questions yes or no. I think you elaborate too much and spend entirely too much time, and you give Mr. O'Brien entirely too much opportunity to spread it out.

Mr. Ransom: That question called for an explanation.

The Master: No. Next question.

Mr. O'Brien: There is a meeting of some minds here somewhere.

The Master: What?

Mr. O'Brien: There is a meeting of minds

25896 somewhere here.

The Master: Next question. Most of this has been gone over and ought not to be gone over again. Mr. Carter in answering the questions simply repeats what he said before.

The Witness: Well, that is all there is to be said, your Honor. If he keeps on asking the questions I do not see how I can avoid giving the same answers over again.

Q. I did not ask you before, Mr. Carter, whether or not you had included "Operating Expenses" and made a study of them to determine what this amount was, did I?

The Master: The question is not allowed, being argumentative.

Mr. O'Brien: Exception.

Q. You were asked that in 1906, in the old case, were you not, Mr. Carter?

The Master: The question is not allowed. It is not useful.

Q. I will ask you whether or not, in making up these estimates of what your opinion was of working capital necessary, you went over your treasurer's books for several years, or for ten years—for any given period, to determine about how much of the payments 25898
made fom day to day are for construction work?

Mr. Ransom: Objected to.

The Master: I will take a yes or no answer.

A. No, I did not.

The Master: Next question.

Q. Why didn't you exclude from your estimate of working capital the amount of money that is paid from time to time for construction work, not included in the matter of every-day repairs?

The Master: The question is not allowed, as already covered.

Mr. O'Brien: Exception.

Q. Do you know as of December 31, 1918, Mr. Carter, what the amount on hand was for prepaid meters 25899
at that time?

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Do you know as of what date what amount you had on hand of moneys that had been paid in advance for the use of appliances?

The Master: Same ruling.

Mr. O'Brien: Exception to these rulings.

Q. Your practice is, Mr. Carter, as far as you can to have your contracts for appliances and rentals run from April 1st to April 1st, is it not?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you in trying to formulate the amount of cash you say you would require as working capital determine as of December 31, 1918, what moneys you still had deposited by those who had rented appliances?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you consider such amounts as might cover unexpired terms of rentals?

25901 The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Did you in formulating this estimate for working capital as of December 31, 1918, inspect the accounts or any data that would show the returns from residuals?

The Master: Same ruling. The witness has fully answered and explained what he did and did not have in mind, and what he did and did not do.

Mr. O'Brien: This clarifies the situation for your Honor.

The Master: No, it does not; it lumbers up the record. The question is not allowed.

25902 Mr. O'Brien: Of course, if we take a blanket statement made by the witness, some counsel might want to rest on that and say, "Well, he did not include any of this, and let it go"; but I want to have the situation on this so clear to your Honor that when you get into this matter on our motion to dismiss the complaint you will discard the whole of this testimony.

The Master: Next question.

Q. You were examined as to the circumstances and conditions surrounding the organization of this com-

pany, Mr. Carter, and you were questioned about the $7,781,000. I want to ask you now what part of that, if any part of it, did include allowance for patent rights?

Mr. Ransom: Objected to. The specific question was asked by Mr. Chambers.

The Master: That is my recollection. The question is not allowed.

Mr. O'Brien: Your Honor, there is not a definite statement of this witness on that question in the record.

The Master: The question is not allowed. 25904

Mr. O'Brien: Would your Honor consider the question as a proper one if it has not been asked before?

The Master: I have a very distinct recollection that the question of patent rights has been asked before. There is no sense in my assuming something that my recollection says did not happen.

Mr. O'Brien: He can say yes or no in about two minutes.

The Master: Next question.

Q. What was the amount?

The Master: Same ruling. 25905

Mr. O'Brien: Exception.

Q. What was the amount charged up, Mr. Carter?

The Master: Same ruling.

Q. Have these patents not expired since that date?

The Master: Same ruling.

Mr. O'Brien: Exception.

The Master: My recollection is that the witness said there was no amount included for patent rights.

The Witness: That is right, your Honor.

25906 Robert A. Carter, Cross.

The Master: Is that correct, Mr. Carter?

The Witness: That is right, yes, sir.

Q. Was it included in anything else—in any other amount?

The Master: The question is not allowed. Next question.

Q. Mr. Rowland, who made the so-called Rowland Appraisal, was not employed by the Consolidated Company to make that, was he, Mr. Carter?

Mr. Ransom: Objected to.

The Master: That question is not allowed.

25907 Mr. O'Brien: Exception.

The Master: The subject matter has already been covered. The witness has already stated the fact with reference to that.

Mr. O'Brien: Exception.

Q. He was employed to make an appraisal by the companies who were brought into the consolidation, was he not?

The Master: The question is not allowed as already covered to my recollection.

Mr. O'Brien: Exception.

Mr. O'Brien: I understand that your Honor will still rule the same in regard to going into the capitalization of the other company?

25908 The Master: I will rule on the questions as you ask them.

Q. Mr. Carter, did you exclude from your estimate of the cash on hand as of December 31, 1918, moneys received from any other sources besides the gas making industry, and appliances?

The Master. Same ruling. I have called counsel's attention to the fact that I will not allow that line of questions, twenty different times. I don't want to hear any more of that. If any more questions are asked on this line it will in-

dicate to me that counsel has no other questions, and I will excuse the witness.

Mr. O'Brien: I want to cover this whole subject.

The Master: It is covered, and I repeat what I have said, that unless you ask questions bearing upon some other line I will assume that you have no other questions to ask and I will excuse the witness. We have been going on half an hour without a single question of any usefullness being asked.

Mr. O'Brien: I object to your Honor's com- 25910
ment, and take an exception to it.

The Master: That is proper.

Mr. O'Brien: As to the results of my examination of the witness.

The Master: That is correct. Take your exception, is protects your rights.

Q. Mr. Carter, have you made out any list of the stockholders of the company who are trust companies or other corporations or partnerships?

The Master: That question is not allowed, and I won't take another question on the question of stockholders, who they are, and how many shares of stock they have. I have permitted all 25911
the latitude I intend to permit on that branch of this cross-examination.

Mr. O'Brien: I wonder if your Honor recalls that the witness was to get up a list.

The Master: He was not to do anything of the sort.

Q. Mr. Carter, you had a call today from me on the telephone in your office?

Mr. Ransom: I object to that as immaterial.

The Master: I will sustain that objection. It is not at all material whether you did or didn't.

Q. Did you place at my disposal today for examination, Mr. Carter, the stock books of the complainant company?

Mr. Ransom: I object to that as not cross-examination.

The Master: Objection sustained. I don't care whether he did or not.

Mr. O'Brien: Your Honor says he doesn't care whether he did or not?

The Master: That is what I said.

Mr. O'Brien: Your Honor heard the witness'
25913 statement the other day as to placing at our disposal these books.

The Master: Have you any further questions to ask? I know what he said and I know what you said and I know what I said. I don't want to hear any more about stockholders.

Mr. O'Brien: I will state it for myself. I called the gas company's office on Saturday, and I rang for Mr. Carter, he was not in. I called there today, and on extension 618, on the 17th floor. I asked for Mr. Carter and they told me he was around the building, and I left word for him to ring me up. Half an hour afterwards I
25914 rang again, and I was told he might be in in about ten minutes. Subsequently he rang me, and I asked him if I might inspect the stock books, and he stated that he was advised by counsel not to let me do it.

The Master: I think it is proper advice.

Mr. O'Brien: I told him that I would bring the matter up today, and he thought it should be threshed out with Judge Ransom. I just want to make the record so it will be clear. If they persist, we want the record to show that they will not permit the stock books to be examined.

The Master: Next question.

Mr. O'Brien: Will your Honor direct them to open up the stock books to us?

The Master: I will not. I have permitted you to cross-examine Mr. Carter with 17 volumes of stock ledgers here, each one three or four inches thick, containing thousands upon thousands of names, as to the stock ownership of any person having any possible relation to this company or companies from whom they purchased materials or supplies, or where I could see that it had any possible bearing. I let you exhaust that. I won't 25916
make any direction. Next question.

Q. Have you brought the minute books here, Mr. Carter?

A. I believe they are here, yes.

Mr. Ransom: They are here.

Q. Will you produce them?

Mr. O'Brien: Of course your Honor recalls that the witness said that he had given me an opportunity to look at those books.

The Master: And I told you then that you had better go on and cross-examine him because you might not get them.

Mr. Ransom: There was a time when we were 25917
willing—

The Master: Don't let us get into that argument. You are not willing to do it now. What is it you want about the minute books?

Mr. O'Brien: I am going to examine the witness as to the contracts made by the complainant company on coal and oil and supplies.

The Master: Ask your question. Don't worry about the minute books. He will call for the minute books that bears upon what you want, if I let him answer the question.

Q. Mr. Carter, will you produce the minute books for 1919, covering the approval of all contracts as to oil and coal supplies?

Mr. Ransom: The complainant states that the minute books for 1919 are here.

The Master: All right—next question. Judge Ransom says they are here.

Mr. O'Brien: I have asked the witness—

Mr. Ransom: I have produced them.

The Master: What do you want to ask the witness, Mr. O'Brien?

25919 Mr. O'Brien: Will you read my question, Mr. Stenographer?

The Master: You asked if he would produce the minute books and he says he has.

Q. Now, point to the minutes that bear upon the approval of contracts for coal and oil?

Mr. O'Brien: Before that I will offer the minute books for 1919 in evidence.

The Master: No, you won't do anything of the sort. You have asked this witness, now, to point to the minutes bearing upon the approval of the contracts for coal and oil—is that correct?

25920 Mr. O'Brien: Coal and oil and supplies.

The Master: Coal and oil and supplies. Now, what is there in his direct-testimony that you are attacking by this line of cross, what did he testify to before on that that you can challenge on this cross-examination?

Mr. O'Brien: Your Honor, I don't think I am called upon to sit down and discuss this case with the Master.

The Master: The Master rules that the witness having testified to nothing—

Mr. O'Brien: He has testified as to one thing, if you want one reason, he has testified to the fact that they need so much money to carry on their business—

The Master: The Master rules—

Mr. O'Brien: That they need so much cash, he has testified as to bills payable, he has testified that he is the secretary and vice-president of this company, and I can examine him as to the knowledge he has of what goes on in this company. He has testified that he is in touch with the expenses of this company. I can controvert 25922
him on that by showing that he does or does not know anything about the records in this book.

The Master: The Master rules that nothing testified to by this witness on direct justifies the cross-examination on the lines indicated by counsel, and he therefore declines to permit the question as not being cross-examination. It is apparent to the Master that the counsel for the defendant Swann is attempting to make the witness his own witness and bring out new matter which the Master rules should be brought out in the defendants' case and not on cross-examination—this in the exercise of the Master's discretion. 25923

Mr. O'Brien: But your Honor is assuming, and has assumed all the way through this case, that there is going to be a defendants' case.

The Master: I don't care whether there is or not. I say it is not cross-examination.

Mr. O'Brien: That there is going to be proof offered in this case by the defendant.

The Master: I don't care whether there is or not.

Mr. O'Brien: You have continually asserted that we have to bring out in our case—

The Master: You can if you please, I don't care. You won't ask it on cross-examination.

Mr. O'Brien: I offer in evidence now the minutes of the executive committee for each of the years from 1906 to 1919, inclusive.

Mr. Ransom: Objected to as incompetent and immaterial and not within the issues of the case and not cross-examination.

The Master: Objection sustained.

Mr. O'Brien: Your Honor is making the ruling without looking at the books?

25925 The Master: I have made my ruling.

Mr. O'Brien: Is your Honor assuming that there is nothing in these books concerning which I may question the witness within the proper confines of cross-examination, without looking at the books?

The Master: You can question the witness, and the witness willl refer to the minutes, and whenever the minutes show themselves to be proper as part of the cross-examination, I will allow it. I will not allow this blanket offer of the minute books in evidence in view of the statement you made as to the purpose of your examination.

25926 Q. Mr. Carter, are matters of policy of the complainant company determined by the executive committee?

The Master: The question is not allowed. I do not see how it is cross-examination on any matter brought out on the direct.

Q. Is the administration of the complainant company, so far as the gas making business of the company is concerned, under the executive committee, primarily?

The Master: Same ruling.

Mr. O'Brien: Exception.

The Master: Counsel will have to show me on what testimony given by the witness on direct this examination bears. Otherwise I shall rule out this line of questions.

Q. Were you directed by the executive committee of the complainant company to become a witness in this case on behalf of the company upon the matters concerning which you have testified?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. Have you ever in the period 1906 to 1919 inclusive been a member of the executive committee, or have you served in the capacity of secretary to it? 25928

The Master: That is not allowed for reasons already stated, in addition to which the question has been asked of and answered by this witness.

Mr. O'Brien: Exception.

The Master: What are you excepting about? Didn't you ask him these things before, and hasn't he told you? Didn't you ask that precise question and get an answer to it?

Mr. O'Brien: Not as to the whole of the period that I have mentioned.

The Master: All right, go on. 25929

Q. Do you read the minutes of the executive committee, or are they at your disposal, Mr. Carter?

The Master: Same ruling.

Mr. O'Brien: Exception. Your Honor, I beg to suggest that it is perfectly proper for me to find out whether Mr. Carter is the only representative of the company to testify upon these matters, whether he has been delegated to represent the complainant company in coming here, whether they passed any resolution with respect to his testimony in this case, whether they have

passed a resolution that the testimony of Mr. Carter here represents the company's views as to the amount of money that they ought to have on hand.

The Master: I have made my ruling.

Q. Mr. Carter, have you gone over the minutes, or are you acquainted with the minutes of the complainant company so far as they relate to the purchase of materials, coal, oil, and the various other supplies, particularly with respect to the time of the payment to be made?

25931 The Master: Same ruling.

Mr. O'Brien: Exception.

The Master: The Master states that it is quite apparent to him that that is a mere subterfuge, as to the time of payment to be made. The contracts speak for themselves that are in evidence.

Mr. O'Brien: I except to the comment of the Master.

The Master: Next question. You have taken your exception.

Q. Are the minutes of the executive committee in your custody?

The Master: Same ruling.

25932 Mr. O'Brien: Are they kept in your custody?

The Master: Same ruling.

Q. Is there any resolution of the executive committee denying you access to the minutes of the executive committee?

The Master: Same ruling.

Mr. O'Brien: Exception.

Q. What other officers besides the members of the executive committee, if any, have access to the minutes of the executive committee?

The Master: Same ruling.

Mr. O'Brien: Exception.

Mr. O'Brien: I offer in evidence the minutes of the executive committee covering the years 1906 to 1919, inclusive, so far as they record the actions of the executive committee with respect to coal, oil, and oil contracts, and contracts for supplies.

The Master: My ruling stands. I will not allow it. It has no place in this cross-examination.

Mr. O'Brien: Exception. Your ruling is the same as before on that matter?

The Master: Yes. 25934

Q. Are the tax items paid by the Consolidated Gas Company or the Astoria Company included in the bills for gas monthly rendered?

A. They are, yes, sir.

Q. Has the Astoria Company ever sent an itemized bill showing the make-up of the amounts set opposite a certain number of cubic feet of gas?

A. Yes, that all comes in to my office. In fact, as comptroller of the Astoria Light, Heat & Power Company, I have all of that information in my files.

Q. Well, is that part of the original agreement covering the cost of gas to be paid to Astoria?

A. The Astoria's cost covers, in addition to the 25935 holder cost of the gas, the labor and materials entering into the manufacture of gas, the interest on the Astoria investment, taxes paid by Astoria, the amount paid by the Astoria Company for its use of the jointly used facilities, consisting of the Astoria and Ravenswood tunnels, and the 60 and 48-inch mains connecting Ravenswood and Astoria plants, and the Standard main under the Harlem River. The use of these joint facilities paid by the Astoria Company to the East River Company for all except the Standard main under the Harlem River, forms a part of the bill to

the Consolidated Company for gas produced by the Astoria Company for the Consolidated Company.

The Master: And how about the insurance on that?

The Witness: There is also included in the bill that is rendered by the Astoria Company the General Officers Salaries of the Astoria Light, Heat & Power Company, the general office supplies and expenses, the insurance, claims for damages and other, what would be termed if the Consolidated paid them directly, general miscellaneous
25937 expenses.

The Master: My recollection is that all that Mr. Carter testified to was the item of taxes, isn't it? And that is all I am going to have any cross-examination on.

Mr. O'Brien: As to Astoria, they seem to desire to have it made clear that Woods should have included some taxes in his hypothetical figures.

The Master: That is all right. I say Mr. Carter has testified to taxes, and that is all I am going to let you cross-examine on.

Mr. Ransom: Part of the taxes.

The Witness: I did not cover all of the taxes,
25938 of course, your Honor, paid by the Astoria Company; only those that are paid directly by the Astoria Company on its own property and for its own purposes. I did not include the taxes, for example, that the Astoria Company pays in connection with the jointly-used facilities. The taxes on those facilities, of course, are paid to the Astoria Company and included in our bill, but they are not paid as taxes direct. They enter into the cost without appearing separately as taxes.

Q. Do you make the reports of the Astoria Company to the Public Service Commission?

A. The Astoria Company makes a report.

Q. Well, do you have anything to do with that as comptroller?

A. As comptroller I am familiar with the report.

Q. Does the president of the company swear to it on your O K to him?

A. Why, I think the treasurer signs that report. I have an impression that the treasurer signs that report.

The Master: Well, whoever it is, is it on your 25940
O K?

The Witness: I do not know that I have specifically O K'd that report, before it was signed. I may have done so and evidence of it might appear upon the report, but I do not recall it at the moment.

Q. He has to depend upon some one to O K the figures that are in that report before he swears to them. Are you one of the men? Does he depend upon your O K for any part of that report before he swears to it as being correct?

The Master: I do not see what relevancy it has to the direct, but I will let you go in and we 25941
will see.

A. I do not recall specifically putting my initials on the report. I have no doubt that the fact that the accounts are under my jurisdiction influences him somewhat in accepting the report and signing it.

Q. Well, what is the particular scope of a controller's duty in that company?

A. The accounts are under my jurisdiction, of the Astoria Company. Its files and records, so far as its accounts and statistics are concerned, the matter of its reports to the Public Service Commission, to the

State Tax Commission, to the State Controller for State tax purposes, and its report to the Federal Government—all of its reports are made up more or less under my jurisdiction.

Q. You are the last word, then? It all comes in to you as head of that particular work?

A. I am very familiar with all of the affairs of the Astoria Light, Heat & Power Company.

Q. Hasn't the man who signs a report got to depend upon you for the reliability of the records before he signs it and swears to it?

25943 A. I have stated that I am inclined to think that he does do that.

Q. Don't you know it? Why do you say you are inclined to think about this matter when it is a matter of a man making an oath?

Mr. Ransom: I object to this. That calls for the workings of Mr. Bradley's mind. How is this a competent question to Mr. Carter?

The Master: What has this report got to do with Mr. Carter's testimony now?

Mr. O'Brien: Some one has got to stand for every statement that is in that book.

The Master: What has that book got to do

25944 with anything he testified to? Does it conflict with it in any way?

Mr. O'Brien: I am just trying to find out how far he is qualified to talk about the expenses of the complainant company so far as he testifies. One of them is taxes.

The Master: Is that report of the Astoria Company in any way in conflict with anything said by Mr. Carter on the stand?

Mr. O'Brien: I will tell you that when I am through cross-examining him.

The Master: Objection sustained. It is quite apparent these are purely fishing questions without any purpose in the mind of the questioner.

Mr. O'Brien: I except to your Honor's comment upon the purpose of my questions.

The Master: Your exception will be noted.

Mr. O'Brien: I assert it is perfectly proper, in my humble opinion, for me to find out how far the witness is able to testify as to taxes and joint rentals and other things that he says are paid to the Astoria Company.

The Master: The Master repeats what he said 25946
before, that I do not believe that that is the real purpose of the question.

Mr. O'Brien: I except to the comment of your Honor.

The Master: Your exception is noted.

Q. Mr. Carter, what is the basis of your statement made on page 6408 of the mimeograph testimony in this case, that six and one half cents represents at the present time the commercial expenses?

A. The basis of my opinion is the actual expenditures under the classification of commercial expenses at the present time.

Q. What does it include? 25947

Mr. Ransom: I object to it. It has been fully covered, what commercial expenses covers under this classification.

The Master: I will let Mr. O'Brien ask that question.

A. It covers the general expenses of the commercial department; it covers the various divisions of the branch commercial offices, the application department, the insurance department, the collection department, the indexing department, the divisions of that character, the appliance department. It is almost entirely

made up, not entirely but almost entirely, of salaries and wages.

Q. Then it is your opinion that every officer of this company ought to be paid the salaries that they are being paid for the work they do for the Consolidated Gas Company in its gas making department?

The Master: One minute. Is that included in commercial expense items?

The Witness: No, sir, your Honor.

The Master: Question not allowed.

Q. Didn't you just state it included all salaries?

25949 A. No. I said that the item was made up almost exclusively of salaries and wages.

Mr. Ransom: Not salaries of officers?

The Witness: Not salaries of officers.

Q. Will you tell me how you computed this six and one-half cents?

A. It is obtained by taking the salaries for the month of October, amounting to $68,661.12, and assuming that that represented one-twelfth of a year's expenses; the supplies and expense in the promotion expense of the department is based upon the average for ten months—

Q. The amount please?

25950 A. The average for ten months would be found by dividing $308,152.78 by 10 and multiplying—

Q. Where do you get that first figure, that $308,000? Where did you get that?

A. Would you mind waiting until I finish stating my answer? Divide that by 10 and multiply it by 12, and it produces $369,783.24, making a total for one year on that basis of $1,193,716.68, which amounts to 6.49 cents per thousand cubic feet on a volume of sales of 18,389,835,000 cubic feet.

Q. What are you reading from, Mr. Carter?

A. I am reading from a memorandum.

Q. Who made it?

A. I made it myself, largely, with my staff, working with them.

Q. Did Mr. Teele make it?

A. Oh, no.

Q. It was not typewritten in his office?

A. No, it was not.

Q. The same typewriting as this, isn't it (indicating Exhibit 364)?

A. I don't know.

Q. Who made that for Mr. Teele, Exhibit 364?

A. I don't know. 25952

Q. Was that done in your office?

A. I don't know. It was not done in my office. I do not know where it was done.

Q. Did Mr. Davidson make that exhibit for Mr. Teele?

A. No, he did not.

Q. Did Mr. Davidson make up what you are reading from?

A. He certainly did not.

Q. Now, will you tell me who assisted you in making it up?

A. He never saw it, even.

Q. Where did you get the figures from? Take 25953 each one of those elements, where did you get each of them from?

The Master: Ask him a question at a time. Don't get excited about it.

Mr. O'Brien: I want to save time. Go ahead, Mr. Carter.

The Witness: What is your question?

Q. In the first place, where did you get the figures on that paper from, that came from other men, who were they, and where did they get them?

Mr Ransom: I object to that; there is no indication there was any figure gotten by other men.

The Master: I will let him answer.

A. These figures are from the company's books.

Q. Who made it up? Who took them off the books?

The Master: Wait a minute. Don't get excited. How much do you say they ought to be.

Mr. O'Brien: I am not saying anything, your Honor, and I note an exception to your Honor's
25955 comment in the record that I am excited; nothing excited about it.

The Master: How much do you say it ought to be?

Mr. O'Brien: What ought to be?

The Master: Six and one-half cents, the question of expense. How much do you say it ought to be?

Mr. O'Brien: I do not have to say anything on that subject, your Honor.

The Master: Go ahead.

Mr. O'Brien: I am not on the witness stand.

25956 The Master: You are going to tell me before this case is closed, you have got to make some claim about something before this case is closed. Unless you want your case to appear utterly ridiculous, you have got to tell me something.

A. I will have to have the question repeated.

Q. Who made it? Who took it off the books—the figures?

A. The figures were taken off the books by Mr. Armstrong of the Consolidated Accounting Department.

Q. Did he make the computation?

A. No.

Q. Didn't he make it under your supervision?

A. No. Another gentleman who worked for me, one of my staff, in the compilation of these figures, was Mr Barnitz, who is the superintendent of that department, and one of the assistant secretaries, and the superintendent of this department especially.

Q. Where did you get these sum totals?

A. These ten months' figures are taken from the books, and your people can check them without any difficulty whatever.

The Master: Do not get into any argument with Mr. O'Brien, Mr. Carter. 25958

Mr. O'Brien: We will have a talk about what our people will do later on, your Honor.

The Master: Do not let Mr. O'Brien get you excited.

Mr. O'Brien: It is like going into the stock books with your permission.

The Master: Next question.

Q. Have you gone over the books from which those figures were taken and checked them up?

A. No.

Q. Did Mr. Teele go over those figures that you have just read, that you say were taken from the books by Mr. Barnitz and Mr. Armstrong, and check 25959 them up?

A. No.

Q. Will you state what particular books they were taken from?

A. The operating ledger for 1919, which is in evidence.

Q. Did they use the journal at all?

A. No, I do not think they had occasion to.

Q. Did they go into the Public Service Commission reports for any part of that period?

A. There is no report to the Public Service Commission covering any part of that year.

Q. It was for a year ending in October, was it not?

The Master: Answer his questions yes or no, Mr. Carter.

The Witness: It would leave the question as to whether there might be such a report, but they did not.

Q. What is this memorandum entitled that you have been reading from?

A. It is just headed, "Consolidated Gas Company, Commercial and General and Miscellaneous Ex-
25961 penses." It covers the year 1918, the month of October, 1919, the ten months of 1919, and a nominal year ending October 31st, 1920, based upon these determinations of the present cost of operating the Commercial Department and the present general and miscellaneous expenses of the company.

Q. Was Mr. Armstrong asked anything about those figures when he was on the stand as a witness in this case?

A. I do not think he was.

Q. Do you know to whom he assigned the work of getting up the figures what man under him?

A. There were no figures gotten up. Simply a
25962 tabulation made from the operating ledger. I could have checked it in a few minutes..

Q. Do you know when it was made?

A. Since October 31st, because the year was closed —at least the books had to be closed for October.

Q. Was a copy of it turned over to Mr. Teele?

A. No.

Q. Was the original turned over to Mr. Teele?

A. No.

Q. Was Mr. Teele asked to verify it?

A. No.

Q. Were there any deductions made from the fig-

ures found in the books, for salaries of those part of whose time is spent on the work of the affiliated companies?

A. All deducted. This is the net cost to the Consolidated Gas Company of these departments.

Q. There was some figuring about it, then, was there?

A. None, because it was all shown in the operating ledger.

Q. You mean the deductions are shown in the operating ledgers?

A. They are. 25964

Q. For work done for the affiliated companies?

A. They are.

Q. And also for the supplies, do you mean, bought in part for the other companies, also deducted from the accounts in the operating ledger?

A. Everything charged against this account that belongs to any other company is credited and taken out of it.

Q. Does the company make a practice of deducting from the total salaries of any of its employees in the Commercial Department portions of the time that they use on the business of the affiliated companies?

A. They are not dealt with as individual matters. 25965 The charges against other companies are for a *pro rata* share in the cost of some division of the service.

Q. In what way. How would you illustrate that so we will understand what you mean?

A. Well, promotion expense, for example, would be divided between the Consolidated and its affiliated companies on the basis of their interest in the work performed by that department.

Q. And what other? How about your appliances?

A. That also is charged against other companies—their share in the expense.

Q. How about the appliance business?

A. How about the appliance business independently of the Appliance Department?

Q. That is a separate word. Yes, sir there are no separations as to that in the operating ledger or journal, are there?

A. There are divisions that are prescribed by the Public Service Commission in the uniform system of accounts—several subdivisions that are applicable to the appliance business, and they are shown in detail in Mr. Teele's statement of the company's rev-
25967 enue and expenses for the calendar year of 1918 and for the twelve months ending October 31, 1919.

Q. Well, it would be necessary for Mr. Barnitz and Mr. Armstrong to get into the operating journal to verify these figures, would it not?

A. No.

Q. Why not.

A. It is all shown in the operating ledger.

Q. In what accounts?

A. In the commercial expense account.

Q. How many different accounts did they take that memorandum from?

A. I should say that they would find practically
25968 all of it in one account, with subdivisions in the account.

Q. Did you tell them what you wanted when you assigned them to that work?

A. Certainly. I told them I wanted the commercial expenses and the general and miscellaneous expenses made up in this shape and brought to me, and it was after the conference and after going over all those figures that the method of determination of the present cost of gas, in so far as commercial expense is concerned and so far as general and miscellaneous expense is concerned, was fixed.

Q. Why didn't you turn that work over to Mr. Teele when he was working on the matter of these expenses of the company, in getting up exhibits, down to and including October of this year, and let him get you the figures?

Mr. Ransom: Objected to as immaterial.

The Master: I will allow it.

A. Why, I do not think I gave the matter any thought, Mr. O'Brien.

Q. Will you say why Mr. Armstrong was not put on the stand to testify to it, he having taken the figures from the books? 25970

A. I do not think any consideration was given to that either.

Q. Did Judge Ransom advise that you were the best man to do it?

A. I don't know that he did. I don't recall his having expressed any opinion on the subject. I think that it was thought as long as I was going on the stand I could probably cover this point, from the fact that these figures are all in my own department.

Q. You would not drop any of the help you have there now, if you wanted to economize; you would keep the same help, would you?

A. I don't know what you are talking about now. 25971

Q. You have given us a figure here of 6 1/2 cents, which represents your judgment based upon your experience?

A. Yes, indeed; my experience and my knowledge of that department.

Q. As an exectuive officer?

A. Yes.

Q. Of the Commercial Department?

A. Yes. Now, what is the question?

Q. You continued the same number of help?

A. The same number of help?

Q. Yes, would you? Do you think they are all necessary?

A. We have not a drone in the hive—not one.

Q. If you had your way, Mr. Carter, would you keep Bob Livingston working for this company?

A. He is not in this item of expense at all, so we can dispose of him, so far as the commercial expense is concerned.

Q. Is not promotion expense a part of the commercial expense?

A. Under that heading he would probably figure.

25973 Would I keep him? Why, certainly.

Q. Would you keep him around eating up money?

A. I do not know whether that is his diet or not. I know that he earns all that he gets, if that is your question.

Q. Do the consumers get anything for what he gets?

A. I think they get a good deal.

Q. Who has the hiring of all of these people who are in the Commercial Department; are you in charge of the employment end of it, too, or who is charged with that responsibility?

A. The superintendent at each branch may replace

25974 any employe who for any reason leaves the company's service or who dies, but he may not increase the number of employees in his department without executive approval?

Q. Who hired Mr. Livingston, did you hire him?

A. No.

Q. Is that a matter done by the executive committee?

The Master: Who hired him? Have you got to ask fourteen questions to ask who hired a man? Do you know who hired him?

The Witness: I do not know who hired him. I presume it was the president of the company.

Q. Have you ever put your O K on payments made to Mr. Livingston?

A. I do not know that I ever had occasion to. I should not hesitate to if it became necessary for me to do so.

Q. Do you mean you have a chance to observe what work he does for the company?

A. I think I have a pretty good impression of it.

Q. Is he working under your directions?

A. No.

Q. From whom does he take orders, then?

A. Well, I think that a good deal of his work is 25976
done without taking orders from anybody. I think he understands pretty well what his duties are.

Q. Now, Mr. Carter—

The Master: Now, Mr. O'Brien, just ask your question.

Q. Does he take his directions as to his work from Mr. Cortelyou, or from you, or from Mr. Addicks, or from whom?

A. You refer to his principal duty, which is the preparation of advertising and the writing of advertisements, and the placing of them?

Q. I am referring to all of them.

A. It would depend a good deal on what you are 25977
referring to.

Q. All of his work?

A. He does not get any instruction, for example, as to what matter he shall put in "Gas Logic" every month. He does not ask anybody's instructions about that. It is his business to obtain the material that appears in there every month, the advertisements and the articles and all the rest of it.

Q. Is his work outlined by resolutions of the executive committee?

A. Not that I am aware of.

Q. Who gives the president authority to OK payments to Mr. Livingston?

A. Specifically, I don't know.

The Master: That is an answer.

Q. Do the minutes of the executive committee come to you?

A. Yes.

Q. Regularly, for your inspection?

A. Not for my inspection. I am the custodian of them. I read them to the Board of Trustees every month.

25979 Q. Well, you are not barred like Zollikofer was from reading them, are you?

The Master: The question is not allowed.

Q. You say you cannot recall anything about the employment of Livingston and the direction of the president to sign payments to him of various amounts?

A. I have no knowledge on that subject, Mr. O'Brien.

Q. Will you say whether or not in these books that have been produced here this afternoon there is any resolution of the executive committee authorizing George B. Cortelyou to give this publicity agent authority to spend money?

25980 A. Why, every bill that is paid of that character is approved specifically by representatives of the Board of Trustees every month.

Q. You know those bills of Livingston are paid on executive approval of George B. Cortelyou, don't you?

A. I think probably that is so.

Q. They have not got your signature, Mr. Carter?

A. I think they may have had at times.

Q. Only at times. You would not say that you put your name, your "R. A. C." on the bills paid to Livingston right along?

A. I have stated I would do so if it were necessary.

Q. I am asking you what has been done?

The Master: We have had enough of that. I have heard enough of Mr. Livingston.

Mr. O'Brien: Your Honor, you are not aware of the amounts of money they have been turning out to this man Livingston?

The Master: The mere fact that you talk the rest of this week won't make it more or less. We have it from the books.

Mr. O'Brien: This officer is a representative 25982
of the company, very likely the only one we will have on the stand, the mouthpiece of the complainant, and it is an opportunity for them to state if they have any justification for this commercial expense. He has given an expert opinion and I have a right to ask these questions.

The Master: We have had enough of Livingston. Get to something else.

Q. Who determined that "Gas Logic" should be printed, the executive committee?

A. I presume so.

Q. Was it a direction of yours, within your authority? 25983

A. No, it was not at my personal direction.

Q. Is it a matter that could be taken care of without any specific resolution on the part of the executive committtee, within the authority exercised by you or other officials right along?

A. I have not any opinion on that subject.

Q. A delicate subject?

A. I have answered your question.

Q. Well, I appreciate, Mr. Carter, that I am asking you about your fellow officers.

25084 Robert A. Carter, Cross.

The Master: No, you are not doing anything of the sort, and there is no delicacy about it. The witness has told you he does not know; he has no opinion about it.

Q. Did you include "Gas Logic" in any one of these expenses concerning which you gave testimony since you went on the stand?

A. Yes.

Q. And in your opinion that paper, "Gas Logic" is a book that the consumers ought to bear the expense of?

25085 A. Most decidedly, should go into the cost of gas.

Q. It is helping the gas business?

A. It is helping the gas business, it is helping the consumers, it is helping to keep the cost of gas down to the lowest possible figure.

Q. In what way? By promoting the sales?

A. By promoting the use of it.

Q. Do you think that by increasing the sales you can keep the cost down?

The Master: Not allowed.

Mr. O'Brien: Just a minute, your Honor—

The Master: No, I won't have "just a minute." We have had enough of it; I am sick and

25086 tired of this cross-examination. There is nothing to it.

Mr. O'Brien: I except to your Honor's becoming sick and tired on the record here. I object to the comment and take exception to it. A man has come in here and tried to add six cents and a half to the commercial expenses.

The Master: I will let you go to the limit to find out how Mr. Carter figures six and a half, and to criticise any item, but there is some limit somewhere to purposeless, useless questions, and I repeat it again on the record. Go ahead.

Q. Have you got the mailing list of "Gas Logic"?

The Master: Not allowed—silly.

Mr. O'Brien: Exception.

Q. You said it had 40,000 readers. What is the mode of distributing it?

A. It is distributed both by mail and through the Commercial Departments, Branch Offices of the Consolidated, and its allied companies. There are always copies at the various counters to which consumers go to transact business with the company, and they may help themselves to them, and besides that there is a mailing list, because for the postage 25988
involved the publication is sent by mail to whoever desires it.

Q. Getting back to this six and a half cents, Mr. Carter, did you go down for the purpose of testifying in this case, or did you go over the accounts in a general way, to see the manner in which the money had been spent during the last year or two, before you formed this judgment as to six and a half cents?

A. I know all the time how it is spent. I do not have to go to books, and I do not have to go to accounts.

Q. Your opinion has been the same right along, then, as to the six and a half cents? 25989

A. No, because it was not six and a half cents six months ago, and it was not as much a year ago as it was six months ago, and it was less two years ago than it was a year ago. So that my opinion is based upon facts and conditions as they exist today.

Q. Did you take that six and a half cents and add it to the other expenses so as to determine just about what proportion of the total expense of this company under your theory and Woods' theory would be chargeable to overhead expenses?

Mr. Ransom: I object to the question as vague and meaningless.

A. I do not know what you are talking about, Mr. O'Brien.

Q. What would you say were the overhead expenses of this company?

Mr. Ransom: Objected to as vague and meaningless.

A. I do not know what you mean by overhead expenses.

Q. I want to know just how you take that term?

A. It does not mean anything to my mind.

Q. Does not mean anything?

25991 A. Does not convey anything.

The Master: It is not cross-examination, anyhow.

Q. Did you make the computations there to determine the seven cents of the total expense given to this item?

A. It is six and a half cents. It actually came to 6.49 cents.

Mr O'Brien: I will ask that that paper be marked for identification that was read by the witness.

Marked Defendants' Exhibit AA37 for identification.

25992 Q. Was this paper prepared at the time that Armstrong was on the stand, Mr. Carter?

A. No.

Q. It is something gotten up since?

A. Yes.

Mr. Ransom: Don't you want it in evidence?

Mr. O'Brien: It is like the stock books—I have not seen it yet, except a peep at it.

Mr. Ransom: You can see this and you cannot see the stock books.

Mr. O'Brien: Don't be too sure about that.

Q. Mr. Carter, give me the basis, the sources of your information for your estimate of the general and miscellaneous expenses concerning which you testified at 6408 of the mimeograph record?

Mr. Ransom: He has not given any estimate. Where do you get the estimate?

Mr. O'Brien: What?

Mr. Ransom: He has not given any estimate.

Mr. O'Brien: Well, the witness is testifying.

Mr. Ransom: You have asked a question that is inaccurate.

A. In determining the present cost to the company covered by the general and miscellaneous expenses I had recourse to the operating ledger for the year 1918 and for the month of October, 1919, and for the ten months ending October 31, 1919, and with the information before me I determined what the present expenses summarized as general and miscellaneous expenses, and which I testified amounted to at the present time seven cents per thousand cubic feet, would be. 25994

Q. What did you include?

Mr. Ransom: That has been fully covered.

A. If you would like a short answer I would say I included all the items appearing in Exhibit 364 following the item of commercial expense down to and including miscellaneous general expense, excepting one item which I omitted entirely, namely, defensive emergency service. I included nothing for that item of expense which appears on the calendar year 1918 statement and on the statement for the twelve months ended October 31, 1919. 25995

Q. Then in that amount of 7.7 cents you have included salaries, general office, supplies and expenses,

G. O., legal expenses, claims and arrears expense, insurance, vacation sickness, contribution to employes' mutual aid society, superannuation, stable expense, automobile expense, claims for damages, undistributed adjustments, duplicate gas charges, uncollectible bills, interest on consumers' deposits, use of distributing system and defensive emergency service?

Mr. Ransom: No, he said he did not include defensive emergency service.

Mr. O'Brien: Omit the latter.

A. Yes, the item omitted was defensive emergency
25997 service. Miscellaneous general expense is included, Mr. O'Brien.

Q. You took them all into that seven cents?

A. All in that seven cents, yes.

Q. You took all of the salaries of the officers, the general officers, in that amount?

A. Yes.

Q. And at the salaries they are getting in the current year?

A. Yes, at the present time.

Q. Making no deductions for time or energies or interest that they may show in the general business of the company or its affiliations with the other com-
25998 panies?

A. No deductions.

Q. Well, don't you think it is a proper thing, Mr. Carter, man to man, to make some allowance from this overhead time given to the larger matters of the complainant company and the business of the affiliated companies, so far as they mold and conduct the policy and business of the affiliated companies?

A. In the first place I do not deem them overhead charges. They are items of expense to the company.

Q. As a matter of fact, is there not some time spent, some thought given, and the whole project contributed to by these general officers?

A. As to the suggestion that there are larger interests than the gas business, I would like to correct your impression in that regard, because the Consolidated considers that there is nothing that it has anything to do with that is anything like as large as the gas business in importance.

Q. Well, you have a much larger return from other investments than strictly speaking the gas business, haven't you?

A. They come automatically and involve no labor whatever.

Q. The six million dividend you mean comes in? 26000

A. Yes, just by check.

Q. Mr. Cortelyou doesn't need to lose any sleep over that?

A. I don't think he does.

Q. You don't think he exercises any judgment and energy and strength and time expended on the investments in the National City Company, and the loans that are made to affiliated companies, and the other matter in which the business of the whole system is extended?

A. You ask so many questions in one that I will try to pick them up one by one. The National City Company—I don't know what you are referring to. 26001
Are you referring to the fact that we loaned it money?

Q. Yes.

A. That would take very little of anyone's time, the matter of negotiating a loan, and the advantage that we get of course is that we obtain a very fair interest rate on that money.

Q. Proceed with the other parts of my question.

A. Regarding the affairs of the—

The Master: Ask another question. I can't have this. Split up your question.

Mr. O'Brien: Your Honor, we are on a question here of a large—

The Master: Split up your question. I am not going to have Mr. Carter sit here half an hour trying to think of what you asked him.

Q. As to the matter of the business of the company and the other affiliated companies, Mr. Cortelyou's time doesn't amount to anything, he doesn't spend any time on it?

A. Not much time, because these companies are completely organized, they have their own president
26003 and vice president and secretary and treasurer, and they have a perfectly complete organization. So far as any relation between the officers of this company is concerned, that is as much to the advantage of the Consolidated Company to have that contract as it is to them.

Q. Will you tell me one thing that Mr. Cortelyou does that you couldn't do and at the same time do your other work?

A. I object to the question. Have I got to go over Mr. Cortelyou's functions as president of the company?

The Master: Can you answer that question?

26004 The Witness: Why, there are a great many things that I could not pretend to do that he does and would not pretend to do. As vice president and secretary of the company I want to have you understand that my time is very fully employed, and more than fully employed, and so is his time fully employed, and I could not take on any of it, and would not undertake to take on any of it and retain my present duties and my present position with the company.

Q. He never made gas, did he?

The Master: Question not allowed.

A. Well, no, nor did I.

The Master: The cross-examination is getting to be perfectly ridiculous.

Mr. O'Brien: I am asking, for one thing, that Mr. Cortelyou does that he couldn't do with his work.

The Master: The question is not allowed.

Mr. O'Brien: Exception.

Q. Will you name any general class of work that the president does that you could not do in conjunction with your other work?

The Master: Question not allowed.

Q. Will you state any work that he does do, Mr. 26006
Carter?

Mr. Ransom: Objected to.

The Master: I won't allow it.

Mr. O'Brien: If your Honor please, it is a perfectly proper question. There is nothing sacred about the president of this company—

The Master: We have had enough of it.

Mr. O'Brien: Here is 7.7 cents that are charged up to this kind of expenses, and he has given us under oath his judgment on that matter and I submit it is perfectly proper for me to find out what these men do to get the salaries that they are forcing the consumers to pay them. 26007

The Master: I say you have gone far enough into that.

Mr. O'Brien: I have asked the witness to name any kind of work that Mr. Cortelyou does.

The Master: I say you have asked enough.

Mr. O'Brien: I note an exception to your Honor's course in shutting off that line of examination.

The Master: I say you have asked enough to indicate your attitude toward Mr. Cortelyou's salary. Go ahead. I suppose Mr. Cortelyou

performs the functions of the president of the company?

The Witness: Exactly.

The Master: And what that name implies?

The Witness: Exactly.

The Master: He has general supervision over all the departments?

The Witness: General supervision over all the departments.

The Master: And confers with you?

The Witness: With me and all other depart-

26009 ments. He is a very busy man.

Q. Do you know who put him in this company as president?

Mr. Ransom: Objected to.

The Master: That is stupid. The question is not allowed.

Mr. O'Brien: Exception.

Q. The data by which you got the 7.7 cents was taken from the same statement that you had here a minute ago with reference to the other item concerning which I questioned you?

The Master: The paper that was marked for identification?

26010 A. Yes.

Q. Being Exhibit for identification AA37, and the information came through the same channels as the information that you gave with regard to the six and a half cents?

A. All the figures on here are made up from the operating ledger for 1918 and the operating ledger for 1919, except this last column, which is what I determine to be the present cost of the commercial expense and of the general and miscellaneous expense.

Q. Mr. Teele had nothing to do with this, he did not prepare any part of it?

The Master: This exhibit for identification?

Q. This calculation here of seven cents, did Mr. Teele have anything to do with the calculation?

A. No.

Q. Then the sources of information were just the same and no more than what you gave for the other item concerning which I questioned you?

A. Exactly.

Q. The operating ledger?

A. The operating ledger, and my knowledge independently of the ledger of present conditions.

Q. You made your calculations the same way as 26012
to a particular month?

A. Yes.

Q. You took the amount for the elapsed time in 1919—

The Master: Don't repeat it now. He says yes. Don't let us waste half an hour going over it again, repeating the whole thing.

Mr. O'Brien: I am asking your Honor, he can say that.

The Master: You did ask him, and he said yes, and you are going to start all over again and say, "You did that and you did this," and he has already said he did. Life is too short, it 26013
is getting too near the end of the year.

Mr. O'Brien: That baby must be sick today.

The Master: No, the baby is fine, but you make me sick. I try to be patient, but these things get away beyond me.

Q. Mr. Carter, do you estimate that the claims and arrears expenses will continue to be as large as they are in 1919 to date?

A. Expressed in terms per thousand cubic feet of gas sold, the claims and arrears amounted to fifteen one-hundreths of a cent, and at the present time sev-

enteen one-hundredths of a cent, two one-hundredths of a cent higher at the present time than in 1918.

The Master: I think the question was whether it is going to continue to be as large.

The Witness: Oh, I think it is more likely to be larger than smaller.

Q. What makes you think that? What are the claims that are going to occupy anybody's time that you have in mind? Uncollectible bills?

A. That is one of the elements of expense.

Q. Right on that point, Mr. Carter, you don't have
26015 any trouble collecting your bills? The complainant company doesn't have any trouble collecting its bills, does it?

A. Oh, I should say not, a very large percentage of them. There is a small percentage that it is extremely troublesome to collect.

Q. Mr. Carter, the company's practice is to get a deposit in every case?

A. It is not, it is not the company's practice to get a deposit in every case. It is not its practice to get a deposit where a customer has by prompt payment of his bills for a year or two established his credit. It is not our practice to request deposits from con-
26016 cerns engaged in the mercantile business. It is not our practice to take deposits in cases of individuals who are recommended to us as an employee, for example, as a person who will meet all his obligations. We do not charge where we can avoid it, and where we are able to do so we refund the deposit where a customer's credit has been established.

Q. Now, Mr. Carter, as to all appliances the money is paid in advance, as to prepayment meters that money is paid in advance, so that those two classes of cases pass out of the uncollectible, don't they?

A. That is not so, we do not collect on prepayment

meters in advance. It may be that a small part of the quarter that has been put into the meter is, the entire amount paid for not having been consumed at the time the collection is made; but for most of the money in the box the gas has been used. It is not a payment in advance for the gas.

Q. Well, the money has to go into the slot before the gas is usable by the consumer?

A. Yes, but we don't have a man there to take the quarters out as fast as they are deposited. We collect monthly from the prepayment meters, and by the time the money comes into our treasury the gas for 26018
which it has been deposited in the box has been consumed.

Q. But there is a deposit of $2 made for every prepayment meter?

A. Oh, indeed, for very, very few prepayment meters. You are entirely misinformed, Mr. O'Brien. Only meters that are set in places where they are liable to be broken open by reason of inadequate protection on the part of the user of the meter, and we put the responsibility in that case right up to the consumer and make him pay a deposit.

Q. What kind of a case is that, in the kitchen of an uptown apartment? 26019

Q. That is a pretty broad term, "uptown." There are all kinds of apartments uptown.

Q. Give me an idea of the classes of cases where you exact the $2 deposit, and those cases where you do not. You say it is not general?

A. Oh, indeed, not general. Very rarely do we collect a deposit on a prepayment meter.

Q. You say where you think the people may break it open?

A. Well, if not themselves, that they would be careless about protecting it.

The Master: Where you are apt to find plugged coins and other things?

The Witness: Yes, sir, plugged coins and smashed meters and all that sort of thing.

The Master: In other words, where the company's representatives believe it is better to get two dollars' deposit, they get it?

The Witness: That is the case.

The Master: Don't let us waste any more time on that.

Q. It is pretty hard on somebody, Mr. Carter,
26021 some people I know where you exact it, to say they are that type of people.

The Master: That is what you are trying to get Mr. Carter to say so it can be spread around about some of the consumers, and I won't have any more of it.

Mr. O'Brien: I am asking the witness about the questions of paying money to collect bills. That is the text of our sermon just now.

Q. Now, Mr. Carter, these classes then, the appliance business, which is all paid in advance, and a proportion of the prepayment business, is sure money?

The Master: Question not allowed.

26022 Q. In regard to the collection of your gas bills, Mr. Carter, the company carries out the practice of notifying people their gas will be shut off if their bill is not paid?

A. In case it is necessary to do so.

Q. And the same thing applies even where there may be a balance due upon an appliance?

A. Upon an appliance?

Q. Yes.

A. No, I do not think we have ever threatened to cut off a consumer's gas because of the non-payment of the bill for an appliance.

Q. Well, you threatened to take the appliance out?

A. We might do that.

Q. You know the form, you have seen the form letters? I have got one in my office, if you want to have one.

A. I am very sorry that you should have one, Mr. O'Brien.

Q. You have seen the form letters?

A. It never would have gone through my hands, believe me.

Q. Can you state why it is that there should be any uncollectibles where you have these various measures or methods of compelling payment? 26024

A. Well, it occurs as the result, perhaps, of misplaced confidence, in some instances, in other cases, the—

The Master (interrupting): Mr. O'Brien, have you ever had any experience in a bankruptcy court at all?

Mr. O'Brien: Very little.

The Master: Have you ever represented any bankrupt or trustees in bankruptcy?

Mr. O'Brien: No.

The Master: If you had, you would not ask that question. I think rarely is it, and I have 26025 had a lot of them, the case where a man has gone into bankruptcy that he did not owe the gas company.

The Witness: That is true, your Honor.

The Master: Which indicates why I get very impatient sometimes at some of the questions you ask. They occur in my work day after day, and I know these things, and it is a perfect waste of time. I have never known of a case where I ran into a bankruptcy situation, or on the schedules of bankruptcy, there wasn't either this or

some other gas company and the electric light companies.

Mr. Ransom: And the telephone company.

The Master: And the telephone company.

Mr. O'Brien: Be that as it may, your Honor, this company practices what most companies do, these various ways of compelling payment of bills.

The Master: Yes, and they are not absolutely certain and they do not collect every dollar that is coming to them, by a long shot, in spite of
26027 all their precautions. The record shows that clearly.

Mr. O'Brien: If your mind is made up on that, if it does not impress you, there is no use wasting my time.

The Master: No, you are wasting time.

The Witness: There is a very small percentage of our bills that is uncollected, when you express it in percentage. It is included here at .3 cents per thousand.

The Master: But it does happen?

The Witness: Yes, sir; and that would represent about .4 of 1% of all the bills that we ren-
26028 der. It is a very small loss.

Q. Isn't that more than covered by the interest on deposits that never are claimed and that you have had for years?

A. I am not aware that we have any substantial sum on deposit.

Q. Do you ever expect to have anybody take the $500,000 that you have remaining over from the last litigation?

A. What about it?

Q. Have you ever been advised that some one may get that from you some day?

A. You mean claimants?

Q. Yes.

A. They are coming in every little while now. I say every little while; three or four or half a dozen times in the course of a year they come in and claim that money and get it.

Q. Do you require them to produce a receipt?

A. We have a very complete means of identification of the consumer.

Q. Must they produce the receipt?

A. No.

Q. The legal expenses for the year ending October were pretty large on account of the litigation going 26030
on involving the rate, were they not?

Mr. Ransom: I object to the question. What does he mean by legal expenses?

The Master: He means legal expenses.

Mr. Ransom: I mean any expenses in connection with this suit haven't been charged to what you call legal expenses.

Mr. O'Brien: I want to know how much of the amount of 7.7 cents you alloted to legal expenses.

The Witness: Our legal expenses generally run along around forty or fifty thousand dollars a year, for the ten months ending October 31 26031
they amounted to $50,000. We figure that for the item of legal expense, giving no consideration to the extra legal expense because of these proceedings, that the cost will be .0033 of a cent per thousand cubic feet. There has been included in the Miscellaneous General Expenses as representing in your cost of litigation $100,000.

The Master: In this rate case, you mean?

The Witness: Yes, sir.

The Master: Is that included in your 7.7 cents?

The Witness: That is included in the seven cents.

The Master: That is not an ordinary expense?

The Witness. it is not, your Honor, but it has got to be covered by—over a reasonable length of time. That has been conceded generally, I think, in the determination of rate proceedings. It was by Justice Hughes in the Brooklyn Borough case. We do not know what the ultimate expense of these proceedings is going to be, but I believed that to include $100,000 as represent-

26033 ing the present cost due to these proceedings was reasonable.

Q. Can you tell us how much of that 7.7 cents would be minus the $100,000?

The Master: Explain what that $100,000 represents?

The Witness: I will tell you what it would amount to approximately. I will give you that pretty close.

The Master: I am doubtful myself whether that ought to be in.

The Witness: .0054 of a cent.

The Master: About half a cent?

26034 The Witness: Yes, sir.

Q. Mr. Carter, what are the ordinary legal expenses of this company, or at least what have they been for the last three or four years, if you know, irrespective of rate making expenses?

The Master: He gave us that, about $50,000 a year.

Q. Doesn't that include the business done of all kinds, for the system?

A. It includes our legal expenses as a gas company. All the companies carry their own legal expenses.

Q. Shearman & Sterling do not differentiate their bills when they send you a bill for their legal expenses, they do not separate it for work done for gas, or particularly the gas end of the business, and work done for other branches of the system?

Mr. Ransom: What do you mean by system? Do you mean other companies? I object to the question as vague, meaningless.

The Master: I will let Mr. Carter answer.

Mr. O'Brien: I mean the affiliated companies.

The Witness: They bill the affiliated companies directly for legal services. 26436

The Master: Suppose a service charge to your company includes a service to affiliated companies, do you charge the affiliated companies for their share of it?

The Witness: Well, they would if there were some special extra service.

Q. What is the nature of their work? What is their legal work?

A. They are general counsel for the company.

Q. They advise in regard to issues of stock, purchases of stock and investments made, don't they?

A. They advise us on all subjects.

Q. What subjects? 26037

A. We do not require much advice on the issue of stock, because we have an authorized issue of one hundred and twenty-five million dollars, of which approximately one million dollars have been issued, and that was authorized in 1914 and we do not contemplate any more. That certainly has not been included in any service that they have rendered for a period of five years, and probably won't be for a period of five years more.

The Master: Can you tell us generally what they do? Do they advise you about taxes and

tax questions as they arise, and legislation as it arises?

The Witness: Yes.

The Master: And do they advise you with reference to your reports to the various commissions?

The Witness: Various commissions, the Federal authorities and the State Boards, to the commission about any matter requiring legal advice.

Q. Returns made to the various tax departments by the complainant company—it covers the whole of
26[illegible] the business of the company, not only the gas end of it, but every other business that the company is interested in, doesn't it?

A. I have already stated that the other companies pay their own legal expenses.

Q. Do you split up the $50,000 a year into that portion of the legal expenses that have to do directly with the gas making part of the business and that part that does not?

A. It all has to do with the gas part of the business, it all has to do with it.

Q. I asked you whether you split it up in any way?

A. We do not, for there is no occasion for doing it.

26040 Q. Can you give us any specific work done by these people for which they have been paid $50,000?

A. They have advised us.

Q. Can you illustrate it in any way?

A. They have advised us on all matters requiring legal advice since I can almost remember, certainly back in the early years of the present century, 1900.

Q. Mr. Sterling of the firm was a member of your executive committee, for a number of years, wasn't he?

A. He was.

Q. And at the time when his firm was giving legal advice and obtaining these fees, isn't that a fact?

A. He is dead and the fees are continued just the same.

Q. Well, it was a fact when he was alive, wasn't it, Mr. Carter?

A. That he was a member of the executive committee?

Q. Yes.

A. Yes.

Q. And for a number of years he was a member of the executive committee? 26042

A. Yes.

Q. When he died he left as part of his estate a large portion of the stock of the complainant company. That is true, isn't it?

A. I am not aware of that.

Q. You did not know the terms of his will?

A. I did not. Well, no, I am not very familiar with the terms of his will.

Q. Are you not acquainted with the stock that he held in this company when he was alive?

A. No.

Q. Didn't have anything to do with it?

A. No. 26043

Q. Does this firm of Shearman & Sterling get any money for tort actions, or is that given to somebody else?

A. You mean damage proceedings?

Q. For personal injuries.

A. That would—they would not get any money for it, although they would be conferred with in respect of any proceedings of any consequence whatever.

Q. You carry liability insurance, don't you?

A. For tort actions?

Q. You carry Workmen's Compensation Insurance, don't you?

A. What we call Employers' Liability Insurance, yes, we carry that.

Q. And you carry Personal Liability Insurance?

A. What do you call that? I don't know what you mean.

Q. To cover suits for personal injuries received in and around the property of the complainant, or received at the hands of employees of the complainant?

A. We do not insure that, no.

26045 Q. Well, don't your General Insurance Fund cover those points?

A. No; it covers Fire Insurance, Employer's Liability Insurance, but does not intend to cover damage proceedings to outside parties, brought by outside parties.

Q. Well, do these people send you an itemized bill?

A. Who?

Q. Shearman & Sterling.

A. No.

Q. Is there any place—

A. For disbursements, yes.

Q. Is there any place, Mr. Carter, to which we may

26046 go in the records of the company to get a general description of the work done during the year for which the fees are asked?

A. Why, I think that as the result of studying the contract list and various agreements, perhaps, transactions with people whom we sell our residuals to, people with whom we contract to furnish us with materials and things of that sort, you will find evidence that they advise us in those matters.

Q. But there isn't any memorandum from them that would give the general view of the work done for a given period?

A. No, you would not find that.

Q. Did you have anything especially to do with the determination of the self-insurance system that was adopted? Is that a matter in which you passed judgment?

A. Fire insurance?

Q. Yes.

A. No, I do not think I had anything to do with it.

Q. You do not pretend then to pass judgment on the advisability of carrying on that insurance?

A. If my opinion were asked, I should say it was a very wise proceeding.

Q. Do you know enough about it, do you think, to 26043
say that?

A. Yes, I do know enough to say that.

Q. How deeply did you go into it?

A. How deeply from what point of view? There is only one point of view that would interest me greatly, and that would be the cost of carrying that insurance. I believe that we have a beneficial interest in a reserve against future contingencies that may have a definite value in time.

Q. You have never had many fires, have you?

A. I have not died yet, but still I am carrying life insurance.

Q. That is not as bright an answer as you usually 26049
give, Mr. Carter. Have you ever in passing judgment upon it for yourself, in your testimony here, gone into the question of the losses of the company?

A. I know the losses when they occur.

Q. Is it your view that you could save a lot of money by putting $89,000 into insurance in this self-insurance system that you have?

A. Save a lot of money by putting $89,000?

Q. Yes. I take it that it is your view that if you are doing it the other way it would cost you a whole lot more money to get the same protection.

A. The insurance is higher now than it was, Mr. O'Brien. That $80,000 is not applicable at the present time. I think that our insurance, the amount for which we are insured, has been increased probably in order to cover the higher cost of reproducing the property if it were destroyed. Now, the question as to the wisdom of paying into the fund instead of paying it to insurance companies, which we would have to do if we did not pay it into the fund created by these trustees, why, I think the fact that the company has had a beneficial interest in a substantial reserve against
26051 future contingencies, which it would not have a cent of if it had insured in outside companies, is absolute justification for that kind of insurance.

Q. Is the Consolidated Subway Company included in that system or that combination?

A. I think not. I do not think they have any interest.

Q. What?

A. I do not think they insure their subways—

Q. You know what I mean, the subsidiary of the Edison Company?

A. I know the company you mean very well.

Q. Do they take them in?

26052 A. I think not. I do not think it has anything to insure except the subways, and I do not think they would insure them against fire any more than we insure the foundations of our properties.

Q. For instance, that explosion that took place the other night and the damages and expenses of that, will they come out of this fund?

A. I think not. I have a very strong impression that they are not parties to the insurance agreement.

Q. Is it not a fact, Mr. Carter, that you have in gas companies very few fires, as a rule?

A. Well, I think we perhaps have been fortunate so far.

By the Master:

Q. And if you get a fire you are apt to get a very good one?

A. When we do get one we get a good one, your Honor.

Q. And you would not like to have your place uninsured?

A. No, we would not dream of carrying it uninsured.

By Mr. O'Brien: 26054

Q. Mr. Carter, can you recall what the actual losses have been from fire in the complainant company for a decade?

The Master: What difference does it make?

Mr. Ransom: This is all helpful. If we are paying this enormous rate to a company, the gas company would not have anything to show for it. As it is, if the losses are low, the participation certificate does give them something to show for it.

Q. Will you answer that question, Mr. Carter?

The Master: No, he will not. I will not allow it. 26055

Mr. O'Brien: You have been impressed by counsel's statement?

The Master: I have ruled before counsel made any statement. I was rather impressed with my own views about it.

Mr. O'Brien: Well, that is an open confession. Maybe my questions will bring out my view, your Honor.

Q. And, Mr. Carter, you did not for the purposes of expressing an opinion here concerning the cost to the company of insurance, which is one of the elements

making up this 7.7 cents, go into the question of the actual losses through fire during a given period in the history of the complainant company?

The Master: The question is not allowed on the ground that if there had not been a single loss in the last twenty years I should still consider fire insurance as a proper item of expense, and if counsel takes the position that the cost of fire insurance, so long as it is not higher than in the old companies, is not a proper expense, I rule against him. You better not consume the time by
26057 asking further questions along that line.

Mr. O'Brien: I am trying to find out from somebody in the company, your Honor, just what buildings are insured, and some data from which you and anybody may pass judgment.

The Master: Why don't you ask Mr. Carter?

Mr. O'Brien: I will ask that now. I think I put it to him, or Mr. Teele.

Q. I will ask you now, Mr. Carter, what portions of the plants of the company are insured?

A. All destructible portions of the plants are insured.

Q. Haven't you a list?

A. Yes, we have a schedule. You can have it any
26058 time.

Q. Won't you bring that in tomorrow morning, a schedule of that which is insured, so that we can determine whether this is wise to spend this money, or whether it would be better to get the old line insurance?

A. I can answer that question now.

Q. You bring in such a list tomorrow morning?

A. The rates we pay in no case exceed the rates we would pay to outside insurance companies.

Q. Will you bring in your list tomorrow morning, Mr. Carter, that will show just what portions of the plants are insured?

A. I shall be guided by the counsel and the Master's directions in the matter.

The Master: I will direct you to do that.

The Witness: All right, sir. I will bring in our insurance schedule.

Mr. O'Brien: I may state to your Honor just so you will understand part of my view of the matter, that so far as I can learn fires in gas companies are very rare, and what would really 26060
take place if there were a fire would be an explosion, and it is doubtful whether they could get some insurance for it. So that there is not any necessity for carrying a very large amount of insurance on a gas plant.

The Master: You are wasting your time in arguing that with me.

Mr. Ransom: That is an additional reason for having this form of reimbursement.

Q. Mr. Carter, is there anything to prevent the complainant company taking back the portion of the insurance fund that they have contributed, and dividing it up among the stockholders as dividends or 26061
parts of dividends?

The Master: Other than the agreement itself?

A. Well, I guess that would be the principal obstacle, your Honor.

Q. That could be done any time with the consent of the people that had made the contract, could it not?

The Master: Objection sustained. The contract speaks for itself. Is that contract in evidence?

Mr. Ransom: Yes.

The Master: I know the names of the companies in it have been read off, I do not remember whether the agreement itself is in evidence.

Mr. Vilas: I think, your Honor, the agreement was put in evidence.

The Master: Well, if it is not counsel can put it in if he wants to make any point about it. If he wants to show it is an unwise agreement I will let him mark it in evidence.

Q. Mr. Carter, you did not work out the details of the insurance item in making up this seven cent
26063 estimate of yours, did you?

A. What do you mean, work out the details? You mean going over the schedule and looking at the amount for which different properties are insured?

Q. Yes.

A. No.

Q. You just depended on your general knowledge of the insurance carried by the company?

A. And the cost of it as shown by the operating ledgers.

Q. Did it include any bombardment insurance?

A. No, nothing like that.

Q. Did it include any riot insurance?

26064 A. No.

Q. Panic, revolution or uprising?

A. Nothing at the present time.

Q. Was there any insurance included in it that was peculiar to the wartime period?

A. Nothing in my estimate.

Q. Will you state what commissions are paid to Hamlin & Co. for their work in connection with this insurance fund?

A. I could not give you the amount offhand. I can obtain that for you if you wish it.

The Master: Is that as a commission?

The Witness: I think not. I think they received a fixed sum.

Q. Per year?

A. Per year, yes.

Q. Mr. Carter, when was the last agency agreement made, or is the old agency agreement still extant and in force and effect?

A. What agency agreement?

Q. The agreements between the companies.

The Master: Insurance agreement.

A. Do you mean the insurance agreement? 26066

Q. No, I am talking about the other agreement, the so-called agency agreement.

A. You mean the agreements under which gas was transferred between the companies?

Q. Yes, that is what you call the agency agreement, is it not?

A. Why, yes, they have been so termed. They are still in force and effect.

Q. Has it been changed in the last three or four years?

The Master: What is the point of this, Mr. O'Brien?

Mr. O'Brien: I am going into the question of transferred gas, your Honor. 26067

The Master: No, you are not. This witness has not testified to a single thing about transferred gas.

Mr. O'Brien: I have ordered the data here, your Honor.

The Master: I know you have, and when you ordered it and I directed it be brought I knew what I was going to do with it when you got it here.

Mr. O'Brien: Won't you hear me out before you make your ruling?

The Master: No, I will not. My ruling is this: Mr. Carter did not in his direct-examination testify to a single fact applicable to transferred gas, and I will not permit any cross-examination on the question of transferred gas.

Mr. Ransom: I think I should correct your Honor in some respect.

The Master: What is that?

26069 Mr. Ransom: There was one question asked him.

The Master: What was it?

Mr. Ransom: To describe the method of checking certain records in his office, which had a bearing on gas transferred.

The Master: I did not know that. I did not think you had asked him anything about it. In view of Judge Ransom's statement, I will let you cross-examine him and ask any questions bearing on that.

Mr. Ransom: As to the one phase.

The Master: One phase of it may justify more cross-examination. I will see.

26070 Mr. O'Brien: Why, your Honor, not only that, but let me call your attention to the testimony of the other witness that this whole thing is in Mr. Carter's office.

The Master: That I do not care anything about. I know that was your theory.

Mr. O'Brien: What?

The Master: I will not let you cross-examine Mr. Carter on anything they said, but just on what he said.

Mr. O'Brien: I knew the key that opened the door was in the record.

The Master: You ask Mr. Carter anything applicable to what he testified to on direct.

Mr. O'Brien: I want to see, too, if counsel for the complainant will object to our asking these questions.

The Master: I do not care what counsel for the complainant objects to. I object myself because it is a waste of time, and I want to finish this case.

Mr. Neumann: Page 6375.

Mr. O'Brien: This matter is a waste of time, your Honor? 26072

The Master: No, this whole subject.

Mr. O'Brien: I take exception to your Honor's comments.

The Master: I have it here at page 6375. That is correct.

"Q. Mr. Carter, are the computations of the gas transferred between the affiliated companies, station costs, etc., checked by you or under your direction and in your department?

"A. They are checked under my direction by members of my staff."

Go ahead with your cross-examination on the matter appearing on page 6375 (mimeograph copy). 26073

Q. Mr. Carter, will you state who on your staff particularly has charge of making the computations or the checking of figures of transferred gas?

A. There is a question unanswered. I don't know whether you wanted me to answer that on agency agreements or not.

Q. Well, we had better clear that up. When was the agency agreement made?

A. 1903 or 1904, I won't be certain about the time.

Q. And that is still in full force and effect and being followed by the affiliated companies?

A. Except in this respect, that we are paying the Mutual Company, in addition to the rate stipulated in that agreement, we are paying them a carrying cost on plant capacity of 10,686,000 cubic feet—which is devoted to the purpose of producing gas sold by the Consolidated Gas Company.

Q. That is pursuant to an amendment made to the agreement by the executive committee?

A. Well, it didn't take the form of an amendment
26075 to the original agreement. It simply took the form of resolutions on the part of the Boards of the Consolidated and of the Mutual Company authorizing the payment by the Consolidated Company of the carrying cost of this amount of plant by the Mutual Company, which was $2,198,377.35, at ten per cent per annum, amounting to $219,837.74, being for the use of approximately ten million cubic feet of capacity of the New York Mutual Gas Light Company by the Consolidated Company.

Q. Have there been any other modifications made to the agency agreement?

A. I think the agreement with the New Amster-
26076 dam Company provided for the Consolidated Company making a payment at the rate of five per cent per annum on expenditures made subsequently to the beginning of the year 1900 upon additional plant capacity at Ravenswood by that company. That ran along, if my memory serves me, until the completion of the water gas plant of the Astoria Light, Heat & Power Company, and then it was discontinued, the Consolidated Company having adequate capacity then, with the Astoria Plant, and the New Amsterdam Company requiring for its own purposes and the purposes of its subsidiary companies, the Central Union and

the Northern Union, all of its own capacity. Of course the company's relations with the Astoria Company were not covered by those agency agreements, and the payment to the Astoria Company covers all of its expenses, cost of manufacturing, etc., and a return upon its investment, the amount that it pays for jointly-used facilities, and its administration expenses. I think I have stated that.

Q. Then outside those matters that you have referred to there haven't been any other changes made in the agency agreement?

Mr. Ransom: I object to the question, it is not cross-examination at all. 26078

The Master: Oh, yes, I think it bears on the computations.

A. No, I think that the New Amsterdam or the Standard Company would bill the Consolidated Company, or the Consolidated would bill the New Amsterdam or the Standard Companies, upon the basis of those agreements, and that so far as the Mutual Company is concerned, the only difference is due to the fact that the Consolidated actually requires and pays for this 10,686,000 cubic feet or capacity of the Mutual Plant.

Q. Were the payments that were made by the complainant Company to any of the affiliated companies in 1917, 1918 and 1919 made all in accordance with the terms of the agency agreement? 26079

The Master: As modified.

A. As modified as I have described, yes.

Q. They were?

A. Yes, sir.

Q. Was there any change made during the period that I have mentioned, 1917, 1918, 1919, in the methods by which the quantity of gas transferred

should be calculated, and the debits and credits to each one of the companies determined?

A. Yes, there was a method introduced late in 1918, covering the year 1918, which modified the basis by which the quantity of gas transferred was determined.

Q. And that was made in what part of 1918, October?

A. I think that the figures were in preparation and under discussion along in October and November, but nothing was done until the December bills had been rendered under the old plan, and then they were all
26081 cancelled and new bills were made under the new plan.

Q. Now, will you briefly explain the two methods of calculation?

A. The method of calculation which had theretofore been in vogue was to have each company compute for itself the quantity of gas which it had received from or delivered to the other companies. In other words, having its sales and the gas used at its offices and stations, and knowing the rate at which its unaccounted for was to be computed, it was able to compute the amount of gas required for its own purposes, and accordingly as that amount so computed exceeded the
26082 debits of its own station, or was exceeded by the debits of its own company, it was a debtor or creditor company, and bills were rendered accordingly. Do you want me to go ahead now and describe the second one?

Q. Yes, that is the question, to give us the two and show us the difference between the two systems.

A. It was thought that as the result of a number of years of operation of the Street Department street work of all companies by the Consolidated Company, that it was hardly reasonable to longer assume that there was any substantial difference in the unaccounted

for of the different companies except as such unaccounted for might be subject to the variation in the mileage of mains required for a given volume of gas sold or sent out. Therefore a plan was adopted in accordance with which the actual combined unaccounted for gas was allocated to the different companies by a computation which assigned to each company, to cover condensation, slow meters, variations due to temperature, and matters of that kind, three per cent, or approximately one-half of the unaccounted for in that year at any rate. That was divided upon the basis of the ratio of the sales of each of the 26084
companies to be the total sales of all of the companies. The balance of the unaccounted for was divided between the companies upon the basis of the ratio of the mileage of mains of each company to the total mileage of mains. That gave in respect to each company its requirements. It substituted another figure for that arbitrary and what we believed to be somewhat absolete fixed rate of unaccounted for. Having that, and having the requirements of each company, then to the extent that any company was a debtor or a creditor by reason of having produced more or less gas than it required for its own purposes, it was billed or it billed other companies, 26085
as the case might be for the quantity so indicated. It is perfectly simple, and what we believe to be as fair a basis of determination of the requirements of each company, and the extent to which they had produced more gas than they required for their own purposes, or the extent to which they were debtors to some other company for the amount of gas required in excess of what they produced in their own plant, that we could devise.

Mr. O'Brien: I move to strike out after the words, "what we believe to be," from there on.

The Master: Motion denied.

Mr. O'Brien: Exception.

The Master: Will you let me ask you this: Suppose I find as a fact that it costs the Consolidated Gas Company, in its 99th and 21st Street plants, that it costs them no more than say 50 cents or 40 cents, or 30 cents per thousand cubic feet, does it make any difference what the other companies charged them, if I find as a fact that gas can and ought to be produced at 30 cents? If the other companies charge them more—

26087 Mr. O'Brien: No, if they charge them more.

The Master: If they charge them more I have got to disregard it. If they charge them less, it is evidence of the fact that it can be made for less.

Mr. O'Brien: Well, to a certain extent you are correct.

The Master: To what extent am I incorrect, and where will your cross-examination on this be useful to me?

Mr. O'Brien: This examination is going to be useful to you in many ways. In the first place, your Honor, this examination, what the witness has already said, and what has been recorded in

26088 this case, shows that you cannot make a finding upon the essentials of the action now being tried by you without trying every one of the companies. You have got to have them all in here, you have got to treat them as one company.

The Master: That is perfect rot.

Mr. O'Brien: I will except in due time to your Honor's finding, if you find that it is perfect rot.

The Master: The 99th and 21st Street Stations have a certain capacity, haven't they? Isn't that right?

Mr. O'Brien: They have a certain capacity?

The Master: Yes.

Mr. O'Brien: Yes, they have a maximum capacity.

The Master: Now, somewhere in this record I have the basis of figuring what it actually costs to produce gas at these stations, haven't I?

Mr. O'Brien: If you take one or the other, they will condemn each other.

The Master: Suppose I take them both?

Mr. O'Brien: And average them?

The Master: I don't know whether I will 26090
average them. I will arrive at a figure on evidence in the case. The point I am trying to make is this: I will know, and I do not suppose there can possibly be any dispute as to the amount of gas actually sold by the Consolidated Gas Company in the course of a year. Is that so?

Mr. O'Brien: Well, that is not proven, your Honor.

The Master: Go on and ask your question.

Mr. O'Brien: You are going to take the position that absolutely whatever they show on their books to be the sum total of their men's readings of meters— 26091

The Master: I haven't said what I will take. I had hoped that somewhere in this case various counsel could agree on the amount of gas they have sold.

Mr. O'Brien: I do not agree to that.

The Master: Go ahead and ask your question.

Mr. O'Brien: Have you had anybody come in here yet and swear that the sum total of readings represents absolutely every bit of gas that this company sold?

The Master: Go on and ask your question.

Mr. O'Brien: I am not assuming anything about these books. We are bound to clash if your Honor is assuming that the books are correct.

The Master: Ask your questions.

Mr. O'Brien: Let me say right on this—

The Master: There is no use arguing it.

Mr. O'Brien: Your Honor was asking me about the reasons for this examination.

The Master: There is no use arguing it. Go on and ask your questions. I have tried to in-
26093 dicate to you where it is perfectly useless, but you want to have it.

Mr. O'Brien: For ought we know, they may be making gas in the Mutual Company, or in the Standard for much less than they are making it for in the 99th and 21st Street plants, and if they are then we ought to know it in this case.

The Master: Go ahead and ask your questions.

Mr. O'Brien: It is not disposed of simply because they may charge this company more, and if you are going to hold that it is made cheaper by any branch of the complainant company you
26094 will require the figure paid for gas by these other companies to be brought down to that level. That does not cure all of it.

The Master: Ask your question.

Q. Now, Mr. Carter, did I understand you to say that three per cent of the total send-out of all the companies would represent about 50 per cent of the unaccounted for of all the companies?

A. I said that it did, happened to in the year 1918, approximately.

Q. So, for the purpose of discussing the question as to the rest of the unaccounted for we may assume

that it represents at least 50 per cent of the unaccounted for?

A. Approximately.

Q. The portion that is divided upon among the companies under *pro rata* percentages based upon the miles of mains—

The Master: How much do you say gas can be made for?

Mr. O'Brien: I don't say anything on that subject, your Honor.

The Master: Well, you will before this case is finished, you will make up your mind to that. 26096

Mr. O'Brien: I am trying to find that out.

The Master: Oh, I can't follow you at all in this. You are not trying to tell the Court what is in your mind, or trying to help the Court arrive at a figure.

Mr. O'Brien: I have before me the examination of a witness who has charge, he is the clearing house on gas transferred. Now, I am going to try to find out and put it into this record, the whole system of determining the debits and credits, the old the new system.

The Master: Go ahead.

Mr. O'Brien: The method of changing the 26097
scheme by which they determine the unaccounted for, and what was the old and what was the new, and that it is not a fair basis of distributing the unaccounted for.

The Master: We have had all that.

Mr. O'Brien: We have not had yet, even with the witness's statement on the method of making these calculations, a clear statement as to the way in which it is done.

The Master: All right, go ahead.

Q. Mr. Carter, the distribution of that portion of the unaccounted for which is based upon the relative amount of miles of mains of each one of the companies, is without respect to the size of the mains?

A. Yes.

Q. And without respect to any other conditions that may surround the mains at the time of their installation, or the method by which they have been maintained and repaired?

A. No, it does take that into account, because they have been maintained and repaired by the Consoli-
26099 dated Company for sixteen or eighteen years, in fact I think for nineteen years they have been maintained and repaired by the Consolidated Gas Company.

The Master: All the mains?

The Witness: All of the mains of all the companies.

The Master: So that you assume they are all in equally good repair?

The Witness: Exactly.

Q. There is no differentiation made by reason—

A. (Interrupting.) You were suggesting some other things that were not taken into consideration, and I think you named the only one when you said
26100 it did not take into account the variation in the size of the mains. There are no other considerations that were omitted.

Q. Then for the purpose of your computation, you made no distinction between the time when the mains were laid, who laid them and from whom the pipe was bought, whether the pipes are actually in use now or abandoned, is that a fact?

A. No, we used the active mileage of mains. The mains that have been abandoned are taken out of the main mileage.

26101

Q. Where did you get your figures as the basis for this computation from?

A. From the main mileage records of all of the companies.

Q. From Mr. Simpson or his department?

A. No, I think they are obtained independently from each company.

Q. Have you got here that tabulation that you showed to Mr. Sangster and myself?

A. I have never been able to get Mr. Sangster's copy back. I would be very glad to get that back again. I only loaned him that copy. It was my official copy of that document.

26102

Mr. Ransom: Mr. Sangster took it off to Chicago, and we have not been able to get it back.

Mr. O'Brien: You have never spoken to me about that, Mr. Carter?

The Witness: Well, I asked my secretary to inquire, of your people there to find out where Mr. Sangster was and try to get the copy back, and they stated he had taken it to Chicago.

Mr. O'Brien: Well, it was his understanding, as it was mine, I thought that was a copy of the original. Haven't you got another copy of it?

The Witness: I haven't here, no.

26103

Q. Now?

A. This is the one we went over with you and explained to you one afternoon, Mr. O'Brien, or some one.

Q. I want to find who is in charge of this particular work of taking care of this account each month, of gathering in the send-out of all the companies and the requirements of all the companies and making these calculations of these figures.

A. You present a picture of somebody roving

around gathering things in. These come in automatically, this information.

Q. It just comes in automatically?

A. Yes.

Q. Who is the man that gets that and makes that calculation?

A. Mr. Nickerson does that for me.

Q. Is he still with you?

A. He is.

Q. He takes the figures that come in from each one of the companies and makes his calculations on
26105 the figures received?

A. He takes the figures and makes the computations and calculations and furnishes the copies to each company, so that they may come and check it so far as it contains any figures that they are not familiar with, and establish that, in so far as their own figures are concerned, it conforms to their own records.

Q. This system of reckoning unaccounted for on a percentage basis which was in vogue up to the latter part of 1918, had been followed for how many years by the company? As far back as its organization, hadn't it?

A. We still do it on a percentage basis, you under-
26106 stand, but instead of assuming a fixed percentage in respect of each company based upon what it was doing at the time we took over their mains system, we take the average of all companies and we take that percentage of unaccounted for and distribute it over the various companies in the manner that I have described, so that they get what we believe and hope to be a more accurate statement of the gas which they require than had been previously obtained by using that fixed percentage in respect of each company.

Q. I must confess I do not know just how you made your calculations under the old system. Was

the variation between that and the new system only in the method by which you treated the unaccounted for gas?

A. It was a difference in the factor used.

Q. In regard to the accounted for?

A. Yes.

Q. In other respects it was the same as the present system?

A. Practically.

Q. If you had a billion cubic feet of unaccounted for under the old system, you distributed that under a fixed arbitrary basis? 26108

A. In so far as all of the other companies concerned, except the Consolidated. The Consolidated did not figure in that computation at all. At that time the Consolidated took what was left as its own unaccounted for.

Q. And as to the others, you gave them a fixed percentage, and it was the same every year?

A. A fixed percentage, and it was based upon their own prior experience.

Q. At the time they came into this company?

A. Yes.

Q. Mr. Nickerson does not go behind the returns from the other companies as to the sales of gas and 26109 the total amount of gas used by the other companies?

A. No, he accepts their records of what they use as true records of what they do, which they undoubtedly are.

Q. And he accepts also their statement as to the send-out?

A. No, the send-out we have reported to us every day of all of the companies, Mr. O'Brien.

Q. You get that in through the manufacturing department every day?

A. Every day.

Q. And you have to know that in order to run your business?

A. Exactly.

Q. Of the distribution of gas?

A. Yes, sir.

Q. And so far as the mains are concerned, all the gases are turned into the mains and they are all there commingled?

A. They are, substantially.

Q. Isn't there a distribution of this made annually? You do not do it every month, do you?

26111 A. Monthly, it is done monthly.

Q. Aren't the monthly bills based on certain estimates and then all corrected at the end of the year?

A. No, not at the present time.

Q. You would not say that every month, say, for 1919, you gathered in each one of those elements that are necessary for that calculation and made your calculation and rendered bills accordingly, would you?

A. It has been done, and at the end of this month of December, the December bill will be made and the transaction will be closed, there will be no review of it, no revision of it, no cancellation of the bills and substitution of other bills for it.

26112 Q. Well, isn't it a fact—do you recall in your explanation to me and Mr. Sangster in the presence of counsel for the complainant, Judge Ransom, of the unaccounted for—was this system of computing cost of transferred gas that you used certain percentages for each company, don't you use a fixed percentage for each company for the year that represents the relation between the sales of each company and the total sales of the whole system?

A. No. What you are describing now is the method that was pursued during 1918, which was changed by the cancellation of all those bills rendered in 1918, and

the substitution of a bill covering the calendar year based upon this new rule for determining the unaccounted for of each company, or to use a better expression the actual requirements of each company for its own gas business.

Q. What time does Mr. Nickerson get this data in so that he can determine these debits and credits?

A. Early in the month. As soon as the companies are prepared to state their sales, the quantity that they used, their manufacturing cost, they are prepared to make a settlement.

Q. Well, the Astoria gas does not figure as a gas 26114
transferred in this whole computation, does it?

A. It does not.

Q. Except in so far as it is part of the gas that the Consolidated Company has and sells?

A. It is incorporated in the gas which the Consolidated Company accounts for.

Q. And there is little or no unaccounted for gas for the Astoria Company prior to its going into the mains of the Consolidated Company?

A. I should say, no, substantially none.

Q. So that if there was any leakage or wastage of gas and any loss of gas due to the quality of the gas, so far as that which is received from the Astoria is 26115
concerned, the Consolidated takes that over in its unaccounted for?

A. I do not follow you on the loss due to quality. That is a new one on me.

Q. Well, the quality of the gas has something to do with the amount that is unaccounted for, hasn't it?

A. You are asking me a question. If you will explain it a little more, I will try to answer it. I do not know just what is in your mind. I am not aware that it does.

Q. Didn't you ever hear from any of your engineers that the amount of the unaccounted for is caused to some extent by the manner in which the gas is made, the methods?

A. Oh, I think not considerably, not noticeably. I think it is affected more by the conditions to which it is subjected after it leaves the plant. I think the unaccounted for is probably higher during a period of exposed mains; I know the condensation is.

Q. You would assume in the purchase of the gas from Astoria that it is all reduced to a temperature of
26117 60 degrees?

A. The gas is?

Q. Yes.

A. Oh, no. You mean that for purposes of computing a corrected make they used a factor which produces a volume of gas at 60 degrees temperature?

Q. Yes.

A. They do not change the temperature of the gas any.

Q. Well, the temperature of the gas is changed simply by being in the holder, isn't it?

A. It may be; it would depend upon whether it was mid-summer or mid-winter.

26118 Q. Yes, but it is changed somewhat by its long transit to its final destination, isn't it?

A. I thought that you were suggesting that there was some process by which the temperature of the gas was changed as a matter of process of manufacture and distribution. I did not know of any.

Q. In the record, the manufacturing records of every one of these affiliated companies and in Astoria, the corrected registered make is reduced, so far as the record goes of gas made, to a corrected make?

A. It is just a matter of figures, Mr. O'Brien.

Q. I know it is a matter of figures?

A. Yes.

Q. But so far as the purchase goes by you from the other companies?

A. It is expressed in terms of gas at 60 degrees temperature.

Q. That is what you are purchasing?

A. Yes, sir.

Q. And so far as the total make or the total send-out of the affiliated companies figures in the calculations of the transferred gas, it assumed to be the corrected make of those companies? 26120

A. Always.

Q. And not the registered make?

A. Not the registered make.

Q. Whether or not it is actually reduced to that, you do not know?

A. How much more it may be reduced than that, we do not know.

Q. You do not know?

A. No.

Q. You do not go into that for the purpose of making up or determining the debits and credits of each company in this matter of transferred gas?

A. That is the general engineering practice throughout the world, I think. 26121

Q. Now, so far as the Astoria Company goes, and the gas that the Consolidated Company purchases from it, you get your bills, they come and they go, they are rendered and they are paid, without respect to whether or not the gas is actually reduced to a temperature of 60 degrees before it is delivered to the complainant company?

A. It is reduced. We know that it is reduced to a basis of 60 degrees.

Q. You don't go into that matter before paying your bills?

A. We know as a matter of routine practice that it is done. We do not have to go there and watch the man do it.

Q. You say it is physically actually reduced to that temperature?

A. No; I say the computations are made as a matter of routine work.

Q. You know that, as Comptroller of the company?

A. I do; and as Comptroller of the company I
26123 know it with regard to the gas of every company in the city, of the Consolidated and its allied companies.

Q. And you would say that as to every one of these companies between which and the complaint there are carried on relations with regard to transferred gas, that whether or not the gas is reduced physically, actually to 60 degrees temperature, the regulation of the cost is upon that basis?

A. Is upon a regulated volume for purposes of recording and for purposes of computation, to 60 degrees temperature.

Q. Mr. Carter, are the books of the complainant company audited by your direction yearly?

26124 The Master: We have been all over that.

Mr. O'Brien: Exception.

Q. When you said, Mr. Carter, on page 6375 of the mimeographed record that these bills of transferred gas are checked with the accounting records of each allied company by members of your staff, you did not mean that they went and examined the records of these allied companies and went into the question as to the reliability of the factors, did you?

A. Simply went there and checked the facts as set forth in their books of account and their records.

26125

Q. Have you not stated that they assumed that the records were reliable, that Mr. Nickerson took their statement?

A. They did. He assumed that the books were properly recorded and properly kept.

Q. Does Mr. Nickerson go to the offices of these affiliated companies?

A. Most of them are in the building.

Q. I know you are all there together, yes.

A. It is not a long journey, you know, except to go up to the Central Union.

Q. A little journey. What is the practice; what records does he go in there to check up, if he checks any? 26126

A. Their accounts so far as the cost is concerned, their accounts so far as the sales are concerned, and their records so far as the use of gas by the company for its own purposes is concerned.

Q. How far does he go into the costs?

A. Only to the extent that the costs are shown by their books.

Q. He just finds the total cost for the month?

A. He does not check the vouchers for the month. He does not. That will save a lot of questions.

Q. He takes their accounts as represented for the month? 26127

A. He does that.

Q. Does he go to the journal and get the journal entry for the month?

A. No, he will go right to the operating ledger or a similar account and get it from there.

Q. Have you in mind a particular account that he can get that figure from?

A. Yes, I should say the gas production accounts. It is the account prescribed by the public service commission. They all keep their accounts according to

the uniform system of accounts. He does not find it expressed in forty different ways, or shown in many different ways. They all keep their accounts in accordance with the uniform system of accounts, so it is very easy to check them up.

Q. Mr. Carter, when he gets that data, does he keep a book, a special account for transferred gas?

A. No.

Q. Where he will set up categorically these various amounts of the cost of making gas?

A. No.

26129 Q. The elements that go into it?

A. They make a report, every company every month, regarding its cost in detail. In as much detail as that Exhibit 364 and perhaps even more elaborate than that, every month.

Q. And you keep them in the files of your office?

A. Exactly.

Q. They have not been offered in evidence here?

A. I think that any that your people wanted they could have had access to.

The Master: Have you any objection to the complainant marking them in evidence if they are offered?

26130 Mr. O'Brien: Your Honor, they would have to take the regular course in this trial.

The Master: I am asking you in the light of the questions you have asked of this witness, have you any objection to them marking them in evidence, all these monthly reports?

Mr. O'Brien: That would bring up the same questions that have arisen since beginning the case, as to their admissibility.

The Master: But you would object to them?

Mr. O'Brien: They would have to produce the underlying data and prove them.

The Master: Then you would object to them. Would you object to them only on that ground?

Mr. O'Brien: I could tell more about that after I saw them, your Honor.

The Master: Next question. All these bluffs do not get anywhere with me, you know—these bluff questions.

Mr. O'Brien: I must take exception to—

The Master: You know perfectly well if the complainant brought in those sheets here you would yell louder than you have at any time in this trial to keep them out, and I would have to 26132
keep them out.

Mr. O'Brien: My yelling louder and taking exceptions would be in accordance with the facts presented, your Honor, and the condition under which they came in, naturally. My stand on the question of the admissibility of these papers and papers of that kind is pretty well known, so there cannot be any bluffing in my position in that regard.

The Master: Do you want to ask Mr. Carter anything else?

Mr. O'Brien: Well, my mind has got to come back now, your Honor; you got me off. 26133

The Master: Have they been offered in evidence, do you know, Mr. Carter?

The Witness: No, sir; they have not.

Q. I think you have told me about all Mr. Nickerson does, Mr. Carter?

A. I think so.

Q. With regard to checking up the accounts?

A. I think with regard to that particular detail I have described it all.

Q. Can you say how far Mr. Teele went in examining these acocunts?

A. He went to the—

The Master: I will not allow that; that is not cross-examination. You ask Mr. Teele those things.

Q. Are they subjected to these costs of making gas, which are the basis of your bills—the bills for transferred gas made the subject of any further checking or investigation other than you have described?

A. No.

Q. Will you explain how you came to change the system at the beginning of the year 1919?

A. I did not say we changed it then.

26135 The Master: I think he has fully explained that.

The Witness: I explained why we did it.

The Master: He explained why he did it. I will not take any more of that.

Mr. O'Brien: I meant at the particular time it was done.

The Master: The question is not allowed. I think it is sufficiently covered.

Mr. O'Brien: Exception.

Q. Was that done pursuant to some resolution of the executive committee?

The Master: I will allow that.

26136 A. No, I do not think it was.

Q. Was the matter discussed by the executive committee?

A. I think not.

Q. What papers did you bring, Mr. Carter, in answer to the subpoena—these records that you spoke about?

The Master: What papers do you want, Mr. O'Brien? Call for some papers that you subpoenaed and see if they are here.

Mr. O'Brien: I asked him for all the underlying papers that had to do with the question of determining the amount of gas transferred.

The Master: I think you better ask your question.

Mr. Ransom: I think they are all here.

The Witness: Yes. They were brought down, Mr. O'Brien.

The Master: Let Mr. O'Brien have them and he can see whether they are here.

Mr. Ransom: Here are some of these monthly reports that you spoke about.

The Master: Just hand them to Mr. O'Brien with the subpoena and all records of the company that bear upon these accounts and charges, 26138
and they are all subject to his inspection and have been for months. Now look at what you have here.

Mr. O'Brien: That is not correct, your Honor, if you will allow me to correct you.

The Master: Yes, it is correct. All these computations as to gas transferred have been subject to your inspection.

Mr. O'Brien: These particular papers have never been under inspection, so far as I know—

The Master: That is your fault.

Mr. O'Brien: I am speaking now for myself.

The Master: That is your fault. 26139

Mr. O'Brien: I must demur, your Honor, because the facts have not been brought out as to these particular underlying papers here.

The Master: But they were all in those files You should have asked for them a month ago.

Mr. O'Brien: They have not been, your Honor. These are papers from Mr. Carter's own office.

The Master: I do not care; they are records of the Company and you have had a right to look at them.

Q. Mr. Carter, do these papers you have brought here represent all the accounts of the complainant Company with respect to gas transferred for a given period?

A. They are the original data. Those packages contain the original data upon which the intercompany charges for gas transferred were based.

Q. For what period?

A. 1906 down to—

Mr. Ransom: There are various bundles here covering other years; the two Mr. O'Brien has in
26141 his hand are 1918 and 1919.

Mr. O'Brien: What?

Mr. Ransom: He has 1918 and 1919 in his hand.

Q. Have you got any book, a permanent book in which these records may be kept?

A. The bills are entered in permanent books.

Mr. Ransom: The books are in evidence.

The Witness: Both the books of the other companies and the Consolidated Gas Company. This is merely working data, and this is made for checking. It is entered in a permanent record.

Q. Didn't you understand Judge Ransom now to
26142 say these were the monthly reports you testified to, coming from the other companies?

A. No, they are not the reports coming from the other companies.

Q. Look them over, Mr. Carter.

A. I know what they are; I do not need to look them over. When I am talking about monthly reports of other companies, I think you know what I mean.

Q. I am talking about what Mr. Ransom says. He tried to testify here; he said these were the reports.

Mr. Ransom: I said some of them were.

Q. I will ask you, Mr. Carter, If there is any other record kept by the complainant company of the details of gas transferred except the books that have been offered in evidence, that is, the operating ledger and journals?

A. Yes.

Q. That contains this data?

A. Yes.

Q. What are they what are the books?

A. They are the reports, the monthly reports sent to my office by all of the companies and contain all of that information. 26144

Mr. O'Brien: I will ask, your Honor, that these be identified—marked for identification.

Mr. Ransom: I ask that they be marked in evidence.

Mr. O'Brien: Will your Honor see that each group of papers is given some number to distinguish it?

The Master: Yes.

Mr. O'Brien: I want to show the state of the books.

The Witness: Those are not books.

Mr. O'Brien: Whatever you may call it.

The Witness: Those are original working memoranda. The permanent records are kept in the company's regular books and in the regular books of the allied companies, and are also fully contained in the monthly reports made to me by the companies, which are permanent bound records available for your people at any time. 26145

Q. Mr. Carter, you are referring now to the journal and ledger when you say the permanent records?

A. No.

Q. Have you got a permanent book in which any of these data is kept?

A. The journal and ledger would be one, but that is not the only one I am alluding to. I am alluding to a report that is made to me every month by these companies, which contains everything that appears in these records.

Q. And have you that in any bound books?

A. Yes, I have.

Q. And these books are entitled what?

A. Well, they call them—I do not know what the title is. I think they call them monthly reports or report forms, or some such title as that—monthly

26147 reports.

Mr. Ransom: You called for their inspection, and they were produced to you by the Master's direction, over my objection.

Mr. O'Brien: I am asking that these be marked for identification.

The Master: What are they? I identify them on the record. What is that you have there now, Mr. Ransom?

Mr. Ransom: These are the papers produced by Mr. Carter.

The Master: The working papers for what year?

26148 Mr. Ransom: For the months of 1919.

Marked Defendants' Exhibit AA38 for Identification.

The Master: What is the other bundle?

Mr. Ransom: 1918 complete.

Marked Defendants' Exhibit AA39 for Identification.

Q. You state that they are called what, transferred gas statistics, or how will we know those books if we want to call for them?

A. They are not tranferred gas statistics. They

are reports covering all of the operations of these companies.

Q. You say they were gotten up with the same detail as this Exhibit No. 364?

A. Yes.

Mr. Ransom: They are called monthly reports.

The Witness: Monthly reports.

Mr. Ransom: And Mr. O'Brien calls for them and they were turned over to him over the objection of the complainant.

Mr. O'Brien: What are you talking about, Judge Ransom? 26150

Mr. Ransom: The big blank books, of which we had one down here which you looked over.

The Master: Was not that called gas statistics?

Mr. Ransom: Monthly reports, gas statistical studies, yes.

Mr. O'Brien: From affiliated companies?

Mr. Ransom: From all companies.

Mr. O'Brien: I do not recall any.

The Witness: You recall the type of book that it is?

Mr. O'Brien: I recall that in the examination of Mr. Teele, where we brought down or had 26151 some discussion about what were called gas production statistics—

Mr. Ransom: That is a different thing.

Mr. O'Brien: We were trying to seek verification for certain amounts for handling coal from the coal pile into the generator house, and we brought out what we called gas production statistics referred to in the journal. That is all I had produced here, and if it contains something about these other matters of transferred gas, then I do not know it.

The Witness: That is another kind of report entirely that you have described from that which is analogous to the reports of these other companies and I am testifying about.

Mr. O'Brien: I am going to demur on the record to Mr. Ransom's statement that I have had sent over to me the books that the witness has spoken of. What is the use of making random remarks like that?

Mr. Ransom: It came up first with respect to the Consolidated and then came up with respect
26153 to the other companies, and I had a large book here, and you looked it over.

The Master: I don't know.

Mr. Ransom: Prof. Bemis kept after us on it, and finally your Honor ruled—

The Master: That is one of the things I do not recall. That is one of the things I did not think of sufficient importance to carry in my mind, and if it happened I have forgotten it.

Mr. Ransom: Your Honor reverted to the fact that we ought not to withhold anything of that sort. I took the position that they were not of the kind we should turn over and your Honor
26154 ruled against me and they were turned over.

The Master: Go ahead.

Mr. O'Brien: Your Honor, I would like to avoid getting into these side talks with Judge Ransom about where we controvert each other. We do not get anywhere on it. But I am quite sure I do not remember it.

The Master: The record stands that Mr. Carter says there are such records.

Mr. Ransom: Called monthly reports.

The Master: Called monthly reports, which is sort of a black bound volume or book.

26155

The Witness: About that thick (illustrating).

Mr. Ransom: Of which one was hitherto in court.

The Witness: Yes, there was one in court.

Mr. Ransom: We brought it down to show to the Master.

Q. Has the Mutual Company paid any dividends in the last two years?

The Master: The objection is sustained and the question not allowed. The same question will be ruled out as to the New Amsterdam, the Standard, Central Union, Peekskill Lighting and the Westchester Lighting.

26156

Mr. O'Brien: The New York & Queens?

The Master: Yes, the New York & Queens.

Mr. O'Brien: And the National Coal & Coke?

The Master: Yes.

Mr. O'Brien: The Edison Company?

The Master: Yes.

Mr. O'Brien: The United Electric Light & Power?

The Master: Yes, and the Brush Electric.

Mr. O'Brien: Your Honor, there are a number of items might take me about an hour. Would you prefer that I do that in the morning?

26157

The Master: Let us take them we will finish with Mr. Carter.

Mr. O'Brien: I would like to have a conference with counsel before we close with Mr. Carter. There are some odds and ends I might take up in the morning.

The Master: If you want to suspend because you want to have a conference with counsel give me that straight. Do not give me an hour, because you have not got a minute more. I will

adjourn until tomorrow morning on the ground that you want to confer with counsel.

Mr. O'Brien: I will be specific, your Honor. I am going to examine the witness as to vacation and sickness, contribution to Employees Mutual Aid Society, superannuation—

The Master: No, you are not.

Mr. O'Brien: Stable expense, automobile expense, claims for damages, undisputed adjustments, duplicates gas charges—

The Master: You are not going to ask him
26159 about any of those things.

Mr. O'Brien: The uncollectible bills—some questions.

The Master: No, not a thing.

Mr. O'Brien: Interest on consumers' deposits, use of distributing system. Defensive emergency service I will omit, because he has omitted it from his figures, as testified this afternoon. Miscellaneous General Expense.

The Master: You will not. You may as well make up your mind that you will not.

Mr. O'Brien: I will confine myself to an hour tomorrow morning and I will be finished by half-
26160 past ten, your Honor.

The Master: We will convene promptly at half-past nine.

Adjourned to Tuesday, December 16, 1919, at 9:30 A. M.

Last Complainant's Exhibit No. 403
Last Defendant's Exhibit No. AA39

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 26161

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 16, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 26162
MR. O'BRIEN, of Counsel for defendant Swann.

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ROBERT A. CARTER, resumed the stand:

CROSS-EXAMINATION CONTINUED BY MR. O'BRIEN:

Q. Mr. Carter, did you bring the papers that we spoke of yesterday?

A. The insurance schedule is on its way down, Mr. O'Brien; it will probably be here in the course of a few moments. 26163

Q. When did you begin this practice of keeping a superannuation account and taking care of some of your employees?

A. Oh, I should think thirty years ago, probably.

Q. To the same extent as you have now developed it?

A. If the basis was not identical, then it was not substantially different from the present one.

Q. Is there any fixed rule to govern your action? Have you resolved upon any particular program as to who is to get the benefit of it?

A. Oh, yes, quite a well established rule.

Q. Who has charge of it?

A. All superannuation annuities are granted by action of the executive committee, upon recommendation of the officers, and a statement of the particular features of each case.

Q. Each case stands on its own facts and circumstances?

26165 A. Yes.

Q. And is submitted to the executive committee?

A. Yes, that is true, although the basis of computing it is uniform.

Q. What is that? What percentage of their former wage is paid?

A. The annuity is computed at the rate of two per cent per annum for every year the employee has been in the company's employ up to thirty years, sixty years being the maximum.

The Master: Sixty per cent, you mean?

The Witness: I mean sixty per cent being the maximum.

26166 Q. Does it cover all the employees, or is it confined to mechanics and laborers?

A. It is not confined to any class of employees.

Q. Can anybody who has been in the employ of the company become a beneficiary under it?

A. I should say yes to that, although up to the present time I know of no instance when any executive official of any company has been placed upon the annuity roll.

Q. Mr. Bradley is practically on it, is he not? He is given his title or has kept his title, but the salary goes on; you would not call him active, would you, Mr. Carter?

A. Mr. Bradley is as active as a man of his years might be expected to be. His health is not very good. There is no suggestion of such a thing as a superannuation annuity in the case of Mr. Bradley.

Q. Well, he nominally fills the position that he holds, he does not give it any daily attention. You do not look to him to take care of the engineering features of the company, do you?

A. Mr. Bradley is relieved of the routine work to the extent we are able to do so, in consideration of his age and the condition of his health.

Q. Have the affiliated companies a superannuation 26168
program like yours?

A. They follow practically the same rule.

Q. When did the contributions to the Employees Mutual Aid Society begin?

A. The company began contributing to the Mutual Aid fund about nineteen or twenty years ago.

Q. Has not that and the superannuation scheme and the vacation and sickness program of the company been developed and accentuated since the last rate case of the complainant company?

A. There has been no change in any regard in respect of those matters since the last rate case.

Q. You will say that they have not even propor- 26169
tionately increased?

A. What do you mean by proportionately increased?

Q. Either with respect to the number of employees or with respect to the gas sales?

A. The number of employees on the superannuation roll is substantially larger now than it was then; not due, however, to any change in the rule which determines their going on that roll.

Q. You mean proportionately the number has increased?

The Master: Of course he means proportionately.

Mr. Ransom: What do you mean by proportionately increased?

The Master: In the last twenty years a great many employees have gotten twenty years older.

Mr. O'Brien: He does not mean that, your Honor.

The Master: Yes.

Mr. Ransom: The rate of pay has gone up.

Mr. O'Brien: I have asked him to state to me
26171 whether this fund has increased—has not increased more than proportionately, taking either the increase in sales of gas as a basis or the increase in the number of men.

The Master: I will not allow the question. I think we have had enough of it.

Q. Have you a fixed program with respect to those contributions of a certain amount each month, or is that left to the discretion of the executive committee?

The Master: I will not allow that, my recollection being it is part of the by-laws or agreement with this Mutual Aid. It is a fixed amount.

Mr. O'Brien: The by-laws were not adopted
26172 by the company.

The Master: No, but they contributed in accordance with that fixed sum. That has been fully spread on the record. I think you have got enough to make any point that you want to if these things should not be charged against the consumers. Unless I have changed my mind I am going to rule against you on it.

Mr. O'Brien: Your Honor, you know my position is that whatever may be said about many features of expense in and around the gas in-

dustry, when it comes to a rate case this is one of the expenses that should be eliminated.

The Master: Haven't you got enough on the record to present your point?

Mr. O'Brien: I know the little book of by-laws has been produced, but I would like to have it stated right here.

The Master: I will let you ask that one question if that will end it.

Q. When this scheme was adopted the by-laws were approved?

The Master: No, I will not allow that. There 26174
is enough on the record upon which you can base your argument that it must be excluded.

Q. How do they use this money, in sick benefits?

A. Sick benefits and death benefits.

Q. Does the company exercise any control over these moneys given to the association?

A. Yes, though I am not at the moment sure of the channel through which that is done. But I think it is through membership in some controlling committee. But it is only for the purpose of seeing that the provisions of the by-laws are observed, and that sort of thing. It is not to exercise any control independently of the provisions of the by-laws of the as- 26175
sociation.

Q. This is confined to the mechanics and laborers?

A. No, it is not; all classes of employees are members.

Q. Does it include the executive officials and head of departments?

A. It does, largely as a matter of sentiment on the part of the executives. I am a member of the association myself.

Q. You were not on that committee of arrangements for the affair on the 12th. I did not notice your name, Mr. Carter?

The Master: Do not let us waste time on that.

A. I attended it, Mr. O'Brien.

Mr. O'Brien: That is only in passing, your Honor.

The Master: My time is entirely too valuable today to waste time on those things.

Q. Did the executive committee delegate Mr. Addicks to take charge of the garage affairs—the automobile expenses of the company?

26177

Mr. Ransom: I object to that as not cross-examination.

The Master: I shall sustain that objection as not being proper cross.

Mr. O'Brien: It is part of this automobile expense, and it must be explained by Mr. Carter, who has testified as to—

The Master: But whether Mr. Addicks is in charge of it by resolution of the executive committee is not useful.

Mr. O'Brien: It would only lead up to the next few questions, your Honor.

26178

The Master: Get to the next question.

Q. Why was this assigned to Mr. Addicks's particular solicitude—the handling of the garage affairs, the automobiles of the company?

The Master: That is a question. I will let Mr. Carter answer. Do you know?

A. Well, I do not know except that he is the engineering officer, and as the garage affairs are more or less involved in the matter of engineering it would more or less devolve upon him to look after it.

Q. Would you say whether or not the complainant buys gasoline from any other company but the Standard Oil?

A. I would not say that it did not and I would not say that it did.

The Master: The records show.

The Witness: The records plainly indicate that, because all bills for gasoline have been in the hands of the defendants' representatives for some time.

Q. Don't you think, Mr. Carter, apart from your testimony given as to the general expenses, that if the 26180
company is in the stress that you claim, it ought to dispense with the number of its automobiles?

A. No.

Q. Don't you know that Mr. Livingston could get along without the use of an occasional machine?

A. I have no doubt that when he uses it he has very good use for it.

Q. It is a matter that could be dispensed with? It it not an urgent necessity to have these machines, is it?

A. When they are used it is always urgent.

Q. Well, the maintenance of them is not urgent, the keeping of them there for a few trips, comparatively speaking, that they make on official business; 26181
don't you think that they ought to be dispensed with?

A. No, I do not.

Q. When you are on the verge of—did you say bankruptcy, Judge Ransom?

The Master: What is that automobile expense that he used, Mr. O'Brien?

Mr. O'Brien: Why, $146,000.

By the Master:

Q. Does that include the trucks and business vehicles as well as the passenger cars?

A. All of the automobiles, your Honor.

Q. How many passenger cars have they there, do you know?

A. I do not know exactly. I do not imagine there is more than four or five such cars, if there is that many.

Q. The great bulk of this expense has to do with business trucks?

A. The transportation.

Q. Of materials and supplies?

A. Of materials and supplies, odds and ends, things of that sort.

26183 Mr. Ransom: Emergency wagons and emergency work.

The Witness: I might say in regard to the gasoline, of course, Mr. O'Brien, we obtain that as we do all other supplies, at the best market price we can obtain.

Q. Well, the best price the monopoly will give you?

A. I do not think there is any monopoly in gasoline.

Q. There is a leaning towards Standard Oil?

A. Not any, unless the price is the best to be had, believe me.

26184 The Master: Is it your experience, Mr. Carter, that the price of gasoline differs very much, whether it is Standard Oil or Texas Oil or any of the other oil companies?

The Witness: My experience is there is no difference, your Honor.

Q. Mr. Carter, in making up your figure to cover these miscellaneous expenses, I think it was 7.7 cents, which embraces many of the things I have asked you about, as well as the use of distributing system, interest on consumers' deposits, duplicate gas charges, uncollectible bills and undistributed matters, did you

go into these matters minutely before you formulated your idea of 7.7 cents, or is that a conclusion you drew from your composite experience and your perspective view of the years that have elapsed since the last case?

A. I went into it very carefully before forming a conclusion on the items about which you have been interrogating me aggregating seven cents, not 7.7 cents. The 7 cents represents expenses included in that statement before you, but which are not segregated so as to be shown separately. They are included in the amount paid the Astoria Company for gas. 26186
They are the general miscellaneous expenses of the Astoria Company, expressed in terms per thousand cubic feet of gas sold by the Consolidated Company, about .7 of a cent, which I added in my computation and which I gathered that the Master was not interested in.

Q. I did not understand you to include in that Astoria element of this figure—

A. (Interrupting.) Not in the .7 of a cent.

Q. (Continuing.) Anything but taxes and interest on investments. Wasn't that additional amount added by reason of the Astoria plant confined to taxes that the complainant company paid for the benefit 26187
of the Astoria Company?

A. I stated an amount of money, Mr. O'Brien, which represented the taxes paid by the Astoria Company. That does not include all of the taxes which I incorporated in the amount paid.

The Master: I do not think you understand the question. This .7 of a cent per thousand cubic feet does not include any taxes.

The Witness: No, that does not include any taxes whatever. It includes the general miscel-

laneous expenses of the Astoria Company: The general officers salaries, the insurance, general office supplies and expense and expenses of that character, the same kind of expenses in respect of the Astoria Company that you have been interrogating me about regarding the Consolidated Company.

Q. Have you got an itemization of those expenses?

A. Of the Astoria Company?

Q. Yes.

A. Not at the moment. I can furnish you with

26189 them.

Q. There is no later on for me, Mr. Carter. This is your last day with me in this case, as I take it. Now, didn't you expect to be asked about these matters?

A. I think I may be able to testify to your satisfaction in that respect in a few minutes.

Q. Well, is it just this .7 of a cent you have added here, or is it more?

A. I have not added anything.

Q. For certain general expenses of the Astoria Company?

A. I have named them as the cost to the Consoli-

26190 dated Company during the twelve months ended October 31, 1918.

Q. Well, are you sure—

A. (Interrupting.) Of the general miscellaneous expenses of the Astoria Light, Heat & Power Company.

Q. Are you sure that .7 cents would cover it?

A. Yes, it is not more than .7.

Q. Yes?

A. I am inclined to think that that would cover it. That is the general miscellaneous expenses of the Astoria Company spread over the entire sales of eigh-

teen billion and odd cubic feet sold by the Consolidated Company. It would amount to more than that, per thousand cubic feet of manufacture by the Astoria Company.

Q. With the data now before you, can you refresh your memory to the extent of stating what items are include in that .7 of a cent?

A. "Salaries, General Office Salaries, Supplies and Expenses to the General Office, Legal Expenses, Insurance, Vacations and Sickness, Contributions to Employees Aid Society, Superannuation, Defensive Emergency Service, Accidents and Damages." 26192

The Master: You did not include that "Defensive Emergency Service" in your 7 cents?

The Witness: It was not included in the 7 cents, no, sir.

The Master: Is it included in the .7 cents?

The Witness: It is in the .72, your Honor. I will see how much that amounts to in a moment (figuring). It amounts to less than .1 of a cent—.09 of a cent.

Q. Will you tell us while you have that out before you, just what the amounts are for each one of those items which you have included for Astoria?

A. "Salaries General Office, $19,885.01; Supplies and Expense, General Office, $20,354.20; Legal Expenses, $7,197.93; Insurance, $50,652.66; Vacations and Sickness, $3,927.42; Contribution to Employes Aid Society, $6,192.30; Superannuation, $549; Accidents and Damages, $6,712.86." I have left out the item of "Defensive Emergency Service," which would reduce that to .63 of a cent instead of .7. 26193

Q. The rest of the expenses of making gas by Astoria are just included in the amount of money paid directly for the gas delivered to the complainant company?

A. The rest of the expenses of the Astoria Company and these expenses are included, all the expenses of the Astoria Company except that applicable to a very small quantity of gas sold in Astoria, are included in the amount paid by the Consolidated Company to the Astoria Company.

Q. Are these included, too?

A. These are included, too.

Q. Did your estimate of 6-1/2 cents for the items concerning which I cross-examined you yesterday, the commercial expense, did that include any commer-
26195 cial expenses of Astoria?

A. None; they had no commercial expenses.

The Master: Have you got that insurance schedule here?

The Witness: Yes, sir.

Q. Mr. Carter, have you now had delivered to you by messenger the insurance schedule referred to yesterday?

A. Yes, this is the schedule of insurance for the year 1919.

Q. And that paper shows the way in which you have distributed your insurance and the plant or parts of plants that are insured under this system of insurance
26196 testified to?

A. This is not a distribution of insurance. This is an insurance of property, with the amount at which each piece of property is insured stated in the schedule.

The Master: That is what Mr. O'Brien wants.

The Witness: Well, it may be, but it is not a distribution of some sum of money.

The Master: Oh, no; but he means what you say.

Q. Let me get an idea of the system. You have a policy you use just the same as you would with a reg-

ular straight line insurance company, or how do you arrange the method?

A. The amount for which the company insures its property is scheduled, and that is filed with the agent of the trustees, and the company is billed by the trustees for the premiums on the insurance at the given rate.

The Master: You are getting away. Mr. O'Brien, if you will look at this you will see, in the first place, you have this insurance agreement.

The Witness: Yes, sir. 26198

The Master: And there apparently is an insurance policy of some kind, because Hamlin Company's letter of April 7, 1919, says "In consideration of the thirty-nine thousand dollars odd, insurance for the sum of seventeen million dollars placed as per schedule attached is hereby renewed from January 1, 1919, to January 1, 1920." It is quite apparent that they use the standard fire insurance form somewhere, and that this schedule is prepared and that form of letter written and the year put in.

The Witness: Yes, sir.

The Master: Because I see they have their 100 per cent insurance clause attached there. 26199

Q. This letter from Hamlin & Company, dated April 7, 1919, would seem to indicate a premium charged the complainant company of $39,776.40, would it not, for fire insurance?

A. Yes.

Q. And that is for the fire insurance listed in the attached schedule, is it not?

A. Yes.

Q. And it includes 14th Street and 42nd Street plants?

A. It does.

Q. And the Inwood station?

A. It does.

Q. Audubon Avenue and 165th Street, buildings, sheds and fences?

A. Yes.

Q. And tenement properties?

A. Yes.

Q. It includes also testing stations and testing apparatus?

A. What testing station?

Q. 122 Bowery, and 200 East 79th Street.

26201 A. You mean that the photometric apparatus at those stations is insured. It is. It must be an insignificant amount too.

Q. Well, large sums of money in your bill of expenses are made up of amounts which you call insignificant, are they not?

The Master: Not allowed, argumentative.

Q. And this includes a Packard Limousine, No. 10,976; a Cadillac Touring, 47,713; a Cadillac Touring without a number for the motor; a Cadillac Limousine, 47,741; a Maxwell Runabout, 12,282; an Oldsmobile Touring, 63,264; a Cadillac Touring, 61,694; a Cadillac Touring, 65,080; a Baker Electric Runabout, 212,762; a Cadillac Limousine or Touring, 78,453; a Cadillac Limousine or Touring, 78,683; Ford Runabout, 316,606; Maxwell Towncar, 70,846; Cadillac Emergency, 99,810; Cadillac Emergency, A 2775; Maxwell Touring, 23,990; Maxwell Touring, 23,801; Packard Limousine, 78,347; Maxwell Runabout, 60,203; Cadillac Touring, 63,769; Cadillac Touring, 63,409; Cadillac Touring, 63,949; Maxwell Towncar, 70,328; Maxwell Sedan, 124,903; Detroit Electric, 6926; Indian Motorcycle, 76-H 235; Cadillac Emergency, K 59-426—as well as many trucks and other auto vehicles, they are all included in that

26202

list, Mr. Carter, of the insured properties of the complainant?

A. I presume so; you have read them.

Mr. O'Brien: I offer in evidence, your Honor, this schedule, as showing the way in which the insurance is placed.

Paper received in evidence and marked Defendants' Exhibit AA40.

The Master: I think some of these items for "Tenement Properties," and for some of the touring cars, etc., will have to be eliminated.

The Witness: I think most of the passenger 26204
cars are used really for commercial purposes.

The Master: The exhibit is received for all purposes that are useful to the case.

Q. Are there any other books of the account other than the books marked in evidence kept by you or any officer of this company or anybody on behalf of the company, private or confidential, or any other books besides those marked in evidence?

The Master: Why, of course there are; the record shows it.

Q. With the exception of the ledger that was referred to, the general ledger.

A. They would not be books of account. There are 26205
no books of account other than those that have been placed at the disposal of the representatives of the defendants in this proceeding.

Q. I didn't ask that.

The Master: He says other than those marked in evidence. Of course there are.

The Witness: Books of account?

The Master: Yes. From 1906 to 1918 only the "Operating Ledger" was offered, wasn't it?

The Witness: I interpret Mr. O'Brien's question as meaning current books of account.

Q. Yes. In other words, is there any other set of books covering the expenses of this company anywhere?

A. No, no other books of account whatever, current books of account, than those that the defendants have had access to and have been using.

Q. I asked you if there are any other books, I didn't ask what the defendants have had access to.

A. I only want to identify them so you will know what I mean.

Q. I ask you whether or not there are any other
26206 ledgers than the ledger that has been offered in evidence?

A. No, not been offered in evidence. The general ledger was offered and I believe excluded.

Q. Outside of that, and the operating ledgers for the years that we have covered here in this testimony, are there any other ledgers?

A. There are not.

Q. Are there any other journals?

A. None.

Q. Are there any other general books of account kept?

A. None whatever.

26208 Q. You understand of course, Mr. Carter, my question means books, without particular reference to the names, books of account?

A. I think I understand what you mean, and I am answering emphatically in the negative.

Q. Have you got duplicates of your operating ledgers or operating journals?

A. We have not.

Mr. O'Brien: At this time I will suspend, your Honor.

The Master: No—anything else?

Mr. O'Brien: As I understand it, all the examination has been with leave to renew.

The Master: No, now is the time; there will be no other time.

Mr. O'Brien: All the examinations, as I understand it, were with the understanding that witnesses would be recalled if sufficient reason was shown to the Master for recalling a witness.

The Master: But I cannot do that now. I am at the end of the complainant's case. I am told there will not be any more witnesses. Is that correct?

Mr. Ransom: Yes. 26210

Mr. O'Brien: As I understood, in the interim between now and January 5th, the time will be used if necessary for the defendants to recall witnesses for further cross-examination.

The Master: Yes, but not Mr. Carter. He is here, and I want to finish with him. Anybody who has gone before him, I will let you make an application to recall, but I will not let you make an application to recall Mr. Carter. He is here and you have to finish with him.

Mr. O'Brien: I did not understand that different rule for Mr. Carter.

The Master: Well, I am sorry if you don't understand it, but I will not entertain an application to recall any witness other than witnesses who have gone before, other than Mr. Carter, because Mr. Carter is here. I don't want to bring him back. 26211

Mr. O'Brien: He will be back, he will be here every day that we are here.

The Master: That doesn't make any difference.

Mr. O'Brien: If there are some matters that in the hurry of the moment have not been gone

over and ought to be cleared up, I assume we will have the privilege of recalling him.

The Master: No.

Mr. Ransom: There has been no hurry.

The Master: Have you anything else to ask now?

Mr. O'Brien: Will your Honor take that under advisement, subject to whatever may impress you at the time if an application is made for his recall?

The Master: No, I won't entertain an application for his recall. I am going to adjourn, if you are through now, until tomorrow morning. I am going to let Col. Hayward cross-examine him tomorrow morning. If when Col. Hayward is through anything else occurs to you, I will let you ask him, or I will let Mr. Chambers ask him; but when Mr. Carter leaves the stand he is gone. Are you through now?

26213

Mr. O'Brien: I haven't anything further today.

The Master: Before I adjourn tomorrow I will entertain any application by counsel for the defendants for the recalling of any witness produced by the complainant for further cross-examination, and will hear any such application, and the grounds for recalling witnesses and the points to be covered by any further cross-examination. I will then dispose of it, and if I grant any application to recall a witness we will have him down here the next day.

26214

Adjourned to Wednesday, December 17, 1919, at 9:30 A. M.

Last Complainant's Exhibit 403.

Last Defendants' Exhibit AA40.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 26215

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 17, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 26216
MR. O'BRIEN, of Counsel for defendant Swann.

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Mr. Chambers: The defendants would like to have the complainant give the several defendants permission to make photographs of its plant and property.

Mr. Ransom: This request is made in behalf of the engineering firm of Hine & Maltbie? 26217

Mr. Chambers: This is made in behalf of all the defendants.

The Master: All right, Mr. Carter.

ROBERT A. CARTER, resumed the stand:

CROSS-EXAMINATION BY MR. HAYWARD:

Q. Mr. Carter, you heard Mr. Woods and Mr. Brundage testify, did you not, while you were here, that on the inventory of the property from time to time they inventoried the quantity of coal in the piles

by a system of measurements, and have done so since 1901?

A. Yes, I heard testimony to some such effect as that.

Q. Do you concur in that?

A. As to the fact of inventories having been taken?

Q. Yes, and the feasibility of doing it and the custom of the company to do it?

A. As to the feasibility of it I have no doubt; and as to the custom of it I have no doubt.

Q. You are familiar with that proceeding in the
26219 company, aren't you, and you know that that is the fact and that it has been done right along?

A. That is a matter that I haven't any particular contact with, it is an engineering matter.

Q. I asked you if you have any knowledge of it?

A. No, I have no knowledge independently of what I would be informed by the Engineering Department.

Q. But you have no reason to question their statements on that?

Mr. Ransom: I object to the question. It is not cross-examination.

The Master: I think it bears upon the amount required for material on hand, as to whether the
26220 material on hand is—

Mr. Ransom: Well, if it is offered on that phase.

The Master: I am assuming that it is being offered on that phase.

Mr. Ransom: What he is asking for is his comment upon the testimony of some other witness.

Mr. Hayward: Read the question.

(The question read.)

The Witness: No, I have no reason to question that.

Q. Why is it you have changed your mind since the other case was tried? Do you recall as a matter of fact in the other case testifying that that was a practical impossibility to do, and that the company had never done it?

A. I do not recollect so testifying.

Q. Do you recall testifying in the other case, your testimony being found on page 787, the following questions being asked you and the following answers being made:

"Q. At the close of the fiscal year are inventories taken of all supplies and material on hand, of gas, 26222
coke and all other manufactured products?

"A. An inventory is taken of material and supplies other than coal and coke and oil material of that character.

"Q. Why are they excepted?

"A. It is a difficult matter to inventory a coal pile with a good many thousand tons of coal in it."

Do you remember testifying to that?

A. I guess that that was my opinion at that time.

The Master: Do you remember testifying?

The Witness: I do not remember testifying. I do not doubt that I did.

Q. Well, as a matter of fact, in that respect you 26223
were misadvised there at that time, or these other witnesses are misadvised now, isn't that so? I mean there isn't any difficulty presented according to the testimony of Mr. Woods and Mr. Brundage, of doing just what you said was so difficult, and therefore that you did not do it in the other case? I am not trying to lead you into anything, Mr. Carter, but just to get your opinion of it now?

A. It was a matter I had probably given less attention to at that time than I have given since. I think that that was my impression at that time. At

the present time I believe that it is the practice. It may have grown out of our experience in that case, that it was a desirable thing to do, to periodically confirm our book statements of quantities by inventory.

Q. This case was tried in 1906?

A. 1906.

Q. And Mr. Woods and Mr. Brundage—and your testimony, of course, was given at that time, which I have referred to here?

A. Mr. Woods?

26225 Q. No, I say your testimony in that regard was given at the time of this other case, in 1906?

A. Yes, it was.

Q. And Mr. Woods' and Mr. Brundage's testimony covers that practically back to 1901, doesn't it?

A. I do not know what period is covered by their testimony. I have no recollection of it in that respect.

The Master: I think that is argumentative, Colonel, you have brought out the fact.

Q. Now, on the proposition of the necessities for working capital, Mr. Carter, that schedule that you gave us, as I understand it, is your own personal es-

26226 timate of the minimum that good business and safety would require?

A. The $4,625,000 aggregate amount?

Q. Yes, $4,627,000, or something like that.

The Master: He took it as of twenty-five.

The Witness: Yes, that was my opinion.

Q. And that was made up of the various items which you designated, including accounts receivable, which aggregated $1,594,000?

A. As of December 31, 1918, yes.

Q. Yes?

A. Yes, that is true.

Mr. Hayward: I may ask the witness, if the Master please, a question that Mr. O'Brien has asked, but I will try and not repeat it much and I won't be very long. I would hate to be cut off just because I happened to get a little into the same ground.

The Master: I have that in mind, and I have in mind that you do not usually waste time, and I will let you go as far as I possibly can. Go ahead.

Q. Now, what I can't understand, Mr. Carter, and perhaps you can explain it to me, the bills receivable, 26228
of course, are items owing your company?

A. The accounts receivable?

Q. Yes.

A. Yes.

Q. And therefore that you consider as part of the necessities, one item of the necessities, of working capital?

A. Yes.

Q. Now, why don't you credit on the the accounts payable?

A. Because I think they have nothing to do with it. The accounts payable to any extent that we have any is evidence of our credit, which is an asset of ours. 26229
The fact that we might obtain quite a substantial amount of plant and put it into service and use it in the public service and owed money for it, is no reason why we should not include that in the assets upon which we are entitled to earn a return.

Q. Well, don't you then cut the bottom right out of the whole system of credit as established in this country? Suppose a clothing store took their accounts receivable and carried a sufficient working capital to cover all of them and gave themselves no credit whatever for bills payable to clothing manufacturers, they

would have to have a bigger working capital, wouldn't they, than any institution thinks of carrying? I mean the average, always?

A. Their material and their supplies and their accounts receivable of a mercantile establishment, as well as of any other establishment, constitutes an asset of that company.

Q. Their accounts receivable?

A. Of course, in a transaction of a sale, why, there is no doubt that the fact that they owed money would be taken into account, but it would not be for the pur-
26231 pose of determining the amount upon which a return should be computed. The fact that there are obligations of any kind offsetting the assets that is set up is no argument whatever against its inclusion as an asset.

Q. But wouldn't it be your net assets that you would ask a return on?

A. No, it would not be. No one can come in and deprive you of any advantage that your credit gives you, if you have credit.

Q. Nobody is trying to.

A. No. I say that you cannot do it. As a legal matter, they cannot do it, in my opinion.

26232 Q. Perhaps you and I do not look on working capital as the same thing. Just what is your idea, Mr. Carter, of working capital and its necessity in a company of this kind? Will you tell me?

A. If a company had no credit whatever and paid spot cash for everything it got, it would then have to have represented in some form of permanent liability or in its surplus account, sufficient resources to enable it to transact business in that way. In that case it would have no accounts payable; it would have no sundry creditors.

The Master: In other words, it would have to have enough money to pay the receivables and pay for the merchandise in cash?

The Witness: In cash. The only difference is that if they have credit they do not have to have so much fixed liabilities.

Q. Do you know of any institution in the world that is in that position?

A. Of having to pay spot cash for everything it gets?

Q. Everything, of any concern that gives credit?

A. No, I cannot imagine a concern being in that 26234
shape unless it was on its way to the bankruptcy court but a concern—

The Master: Even then they get credit, most marvelously.

Q. The reverse is true of the five and ten cent stores, for instance. They have bills payable but no bills receivable.

The Master: You mean accounts as distinguished from bills?

Mr. Hayward: Yes. But I do not know of any other kind of an institution.

Q. Wouldn't this be a fair rule, Mr. Carter? I
am not trying to argue with you at all. Wouldn't 26235
it be a fair rule to say that your working capital on which you ask these customers to give you a return, a fair return, would be the average net difference between your accounts payable and your accounts receivable?

A. No. In my opinion it would not be a fair presentation of the company's assets.

The Master: That is not the question, Mr. Carter. He asked you wouldn't it be fair to say that you needed as working capital the cash which you needed from day to day plus the difference between your receivables and your payables?

The Witness: No, I do not think it would, your Honor.

The Master: Why?

The Witness: For the reason that I have stated. The fact that the company has credit and is able to obtain assets and create a status where people owed money for goods delivered does not change the fact any, there is no ground upon which there can be any deduction of any current obligations of that company.

The Master: But you look at it from the standpoint of a return, don't you?

26237

The Witness: I do, that is all.

The Master: But Col. Hayward is looking at it from the standpoint of what you need to render service.

The Witness: Well, we need either the credit or we need the cash.

The Master: But you have credit so you don't need the cash

The Witness: We have the credit, so we don't need the cash.

Q. You only need the cash requirements to make up the difference?

26238 A. That doesn't change the fact any.

Q. I am not asking you for your opinion about what you should have a return on, but so far as working capital is concerned, this company could get along and give the same service to the public with the same certainty and the same surety month in and month out, if they had as working capital at all times an amount sufficient to equal at any time the difference between their accounts payable and the accounts receivable?

The Master: Plus additional cash.

Mr. Hayward: Yes.

The Witness: Plus additional cash and materials and supplies.

Mr. O'Brien: I do not subscribe to that theory, your Honor.

The Master: I don't want you to interrupt Col. Hayward's examination.

Mr. O'Brien: I want the record to show.

The Master: I don't want you to, and I won't have it, it is not right. Have you got the question, Mr. Carter? The question is: Couldn't you give the service if you had the materials on hand, the cash you say you need, and the difference 26240
between your receivables and accounts payable?

The Witness: May I not say that you require less in fixed liabilities and less in surplus if you have credit, than if you have not credit. That is the answer.

The Master: I do not think that is an answer.

Mr. Hayward: I do not think that is an answer. I think you can answer the Master's question and mine by yes or no.

The Master: Try to eliminate from your mind, Mr. Carter, the point of view of the claim you make of the return you ought to have, and answer Col. Hayward's question as to whether you 26241
could not run your business as well as you do now, if you had as working capital the cash that you say you need, the material on hand that you say you need and an amount equal to the difference between your accounts payable and your receivables?

The Witness: In the form of a liability called working capital?

The Master: Yes.

The Witness: In the form of a liability called working capital, is that what is in your mind? I have stated it.

Q. No, you did not.

A. I answered affirmatively. But when you talk working capital as an asset as distinct from working capital as a liability, why, the working capital is made up of those items.

The Master: What is working capital? Something to work with, isn't it?

Mr. Hayward: I am trying to reduce it to human language, Mr. Carter, stripped of all of the vague theories, and get down to brass tacks and see what this company could do business and
26243 make gas for the consumers with, how much working capital.

The Witness: I am not dodging an answer to your question at all; I am trying to make it plain.

Q. I ask you whether the company could not do that just as well and surely under the conditions that both the Master and myself have stated to you in that question, and I think you ought to answer yes or no to that.

The Master: Couldn't you operate your business, that is the point? Couldn't you operate with that capital?

26244 The Witness: Yes, it would be liabilities plus your credit that would offset your assets, that is all it means. It would mean your liabilities and surplus plus your credit offsetting certain assets which are your property.

The Master: I think you have your point pretty well established.

Q. Now, Mr. Carter, you had always, being your estimate, as I understand it, materials and supplies necessarily on hand of $1,532,891, as I have the figures?

A. That was the amount on hand the first of the year.

Mr. Ransom: But not an estimate.

Q. Well, actual figures, then?

The Master: Yes, with the statement that he needs that amount of working capital. It is his opinion that they ought to have that amount based upon the fact that there is that amount.

Mr. Hayward: He put that in as his estimate of what was reasonable.

The Witness: I put it in as evidence of the fact at that time.

The Master: His testimony in substance is that is what they had on hand, and that in his opin- 26246
ion that is what they ought to have on hand.

Q. In your repair business and the work you do for the other companies, you do that with this material, don't you?

A. That is only gas making material.

Q. I thought it was pipe and—

A. There may be some pipe and specials in it; I don't recall all of the items. May I see that exhibit a moment?

Q. Can you give us then the details briefly, which go to make up your estimate of the amount required for materials and supplies to be a part of your working capital? 26247

Mr. Ransom: He gave that the other day.

The Master: A detailed statement of the material?

Mr. Ransom: Yes, an itemization, so much coal, so much oil, etc.

A. I don't believe that I have that in detail, Colonel.

Q. Would it be fair to say that a considerable proproportion of that amount; Mr. Carter, is made up of materials not only for the use of your company but for the use of the other companies?

Mr. Ransom: Here are the figures that were given the other day as of December 31st, 1918.

The Master: I don't remember it.

Mr. Ransom: These are the figures given as of December 31, 1905. You remember they tallied with Mr. Mahlbie's blueprint sheets.

The Master: Let Mr. Carter give the information now for 1918. How is that million and a half dollars on hand made up? Read it into the record.

A. Coal $443,177.24

26249 Coke 896.03

Gas oil 115,615.42

Iron mass 1,855.07

Sundry supplies, old waste and packing 3,717.55

Miscellaneous repair material 203,686.82

Gas appliances 636,429.61

That is what we call our sales stock as distinguished from our rental stock.

Pipe and special 117,496.77

Making a total 1,522,873.51

Q. Now, some of those items that go to make up

26250 that total, some of them are carried certainly for the other companies, are they not?

The Master: To be used by other companies?

Q. Carried to be used ultimately by other companies, because they have testified they do their repair work?

A. Only in the street department, and there might be in the pipe and specials included some pipe or castings that might possibly be used in repairing the distributing system of some other company, but it would be a small percentage of it.

26251

Q. How about this $203,000 worth of miscellaneous repair material?

A. Most of that is at the manufacturing stations.

Q. Repair material for what?

A. For repairing the manufacturing plants, fire brick material for retorts, checker bricks for generators, parts for the various apparatus, and that sort of thing.

Q. Here is an item in the annual report of $119,212 main stock?

A. That would be this pipe and specials or the equivalent of it. It is not included in the $203,000.

26252

Q. Here is repair stock at stations $104,000?

A. That would be included in the $203,000. The rest of it would probably be at the fitting shops.

Q. Wrought iron pipe and fittings $86,000?

A. That would be at the various branch fitting shops.

Q. You have made no effort to take from your total the fair amount that is really chargeable to the other companies and being carried for their benefit, have you, Mr. Carter?

A. Included in the $117,495, there is no other item there in which anything of that sort could possibly be included except in the pipe and special items.

26253

Q. How about miscellaneous repair material?

A. You have just stated that $186,000 of it is represented in repair materials at our fitting shops.

The Master: No, he didn't say that. $114,000, I think, was at the stations, and $86,000 at the fitting shops.

Q. Don't you think some of that would go to the other companies?

A. None of it. The only item there about which there could be any shadow of doubt would be the pipe and special items, and there may be something

included in there which might some day be used for the other companies' street work.

Q. And of course, if it is, it should be deducted from it?

A. If it can be separated it could be.

Q. Now, in your accounts receivable and accounts payable, when does the company pay for the gas it buys?

The Master: That has been thoroughly covered

Q. May I ask, at the end of each month or when?

26255 A. Our bills are normally paid about twenty days after the expiration of the month during which they accrue.

Q. Now, your accounts receivable, I presume the bulk of them are made up actually from customers, are they not?

A. The bulk of it is from gas consumers.

Q. Not other companies?

A. No, our own consumers.

Q. The fellows who burn the gas?

A. Exactly.

Q. Now, I don't want to advert to anything that is a disagreeable subject here, but I would like to

26256 know why you do not credit against that the amount that you owe consumers?

A. That we owe consumers for deposits, for example?

Q. No, you pay interest on that, don't you?

A. Yes.

Q. Well, I would say that pretty well covered that?

A. What have you in mind?

Q. The $400,000 or $500,000 that you owe on the old case?

The Master: It has been pretty much covered, but I will let you ask the question.

A. It has no bearing on it. That money is owed to people who are apparently not consumers of gas at the present time. Nothing in the world was ever so extensively advertised in New York City as a fact that we were refunding the excess collected during the pendency of the prior proceeding.

Q. But in your bills receivable you doubtless have people owing you whose gas you have cut off, haven't you?

A. Not for any period of time. Those are all taken out of that account.

Q. You have people included in your bills receivable who are not using gas today, haven't you? 26258

A. Not anyone whose use of gas was discontinued three months ago.

Q. But you cannot segregate one group of customers from another, can you? Do you think you ought to for the purposes of this lawsuit?

A. Why?

Q. What I mean to say is, you owe to New York gas consumers this $400,000, or whatever it is.

A. Our present consumers—I do not consider we owe them a cent.

Q. But the body of your consumers is an everchanging thing, that you have no right, it seems to me, to say that these old consumers are not consumers any more? 26259

A. They are not.

Q. But they were consumers?

A. They were.

Q. And this was owing to them as such?

A. Yes.

Q. And they were consumers on your lines in New York City?

A. Exactly.

Q. And they were part of the public?

A. Had they remained there, or were they there now, they would get that money; it is there for them.

Q. All right; they were consumers and part of the public, and you owe them that money, don't you?

A. The money is undoubtedly owing to consumers of that time, prior to 1909.

Q. Other consumers who change every month perhaps now owe you $1,500,000?

A. You mean they are not presently consumers?

Q. No, I mean your consumers owe you $1,500,000.

A. They do.

26261 Q. And you owe consumers $500,000, approximately?

A. No, not the consumers that owe us the million and a half; we don't owe them a cent.

Q. Well, you owe gas consumers in New York, don't you?

A. No, we don't owe gas consumers in New York.

Q. You owe people who were gas consumers in New York?

A. We owe people who were gas consumers ten years ago, and ceased to be—

Q. I don't care if it is fifty years ago whether they are identically the same consumers or not, if

26262 they owe you a million and a half, and you owe them $500,000, why don't you take that $500,000 from these accounts receivable?

A. We do not consider they are related in any way, manner or shape; that is the only reason we don't make that deduction.

Q. Because they are not the same individuals?

A. They are not the same individuals.

Q. And therefore, that thing applied to any business would upset any credit calculation of any concern in town, wouldn't it, a bank or anything else? If a bank had to owe the same people that owe it in

order to strike a balance, there wouldn't be a bank in town doing business, would there?

A. I don't see the relationship.

The Master: That is the trouble, you get into an argument with the witness.

Mr. Hayward: I may be thick, if the Master please, but I don't think I am as thick as Mr. Carter, if he can't see that.

The Master: I was going to rule out your questions some minutes ago and the ground that they were argumentative, but I let them go on to show how purposeless argumentative questions are. 26264
You have one point of view and Mr. Carter has another, and you could keep it up for an hour without result. You have the facts on the record.

Q. You say that your bills payable are cleaned up at the last of the month—didn't you say that?

The Master: No.

Mr. Hayward: I thought the Master said he had testified to that.

The Master: No, I said it had been covered, but I will let him answer.

Q. Your annual report for December 31st, 1918 shows oil bills due and unpaid, or at least unpaid, 26265
$414,000; and coal bills, $85,000, the total being pretty nearly exactly $500,000. I presume that was normal, wasn't it?

A. I would not say that it was absolutely normal at that time.

Q. The Standard Oil Company never presses you, does it, for its pay?

A. Indeed the Standard Oil Company presses all its debtors.

The Master: Does it press you?

The Witness: Yes, indeed it does if we owe it any money.

Q. As energetically as it presses you for contracts?

A. It don't press us for contracts. I am told they would be glad to get rid of us as customers.

Mr. O'Brien: May I ask a question about this pressure, your Honor?

The Master: No, sir.

Q. Let us take up this $500,000 that you show in your annual report as due for those two items alone, coal and oil. It is one thousand dollars less than five hundred thousand dollars?

A. What is your question about it?

26267 Q. My question is whether you would say that is normal, and if it is above normal, why was it above normal at that time? You took that month as your basis for the normal, didn't you?

A. I took it for the fact at that time.

Q. As being approximately normal?

A. Approximately. We have to be prepared in providing ourselves with working capital not only for normal conditions but for all kinds of conditions.

The Master: I think you are getting away from the question.

A. I would not want to testify regarding that subject without consulting the books. I do not carry

26268 those figures in my mind.

Q. Can you figure out how many months' supply of oil that would be?

A. No, I would not undertake to.

Q. You would know whether it was two months or three months, or what it would be. It would be about two months, wouldn't it?

A. I would not say so.

The Master: It would be more than a month, wouldn't it?

The Witness: I don't think it would be much more than a month's supply.

Q. More than one, and a little less than two, perhaps?

A. It would be more than a month's supply of oil, I am sure of that; I do not think it would be much more than one. That is my opinion.

Q. That would not be an extraordinary situation, would it, a month and a half's oil bill?

A. Yes, I think that normally we would pay our bills monthly. We may have kept them waiting at that particular time.

Q. Well, the reason I took that month, Mr. Carter, was because you did. I did not hunt through the re- 26270
ports to find any particular month that would be advantageous to me, but took your own selection, and that is what it shows, $500,000 due for those two items alone. I was wondering why there was not a credit made on this working capital requirement because of that, as among other things.

A. Well, for the reason I have stated.

Q. And you have not any other reason in regard to this particular—

A. (Interposing.) We do not deem they are any offset to the fact that we have that property at our stations and branches.

The Master: What is the amount of the voucher 26271
ordinarily? What does it average, that you pay this company, do you recall?

The Witness: No, I do not recall, your Honor. I could probably approximate it. I do not like to guess at figures; we can get the facts in the record so easily if it is desired to have them.

Mr. Ransom: The vouchers are all in. It would be about one-twelfth of seven million.

The Witness: No, I do not think it would be so much as that. I think it would be four or five hundred thousand dollars.

Mr. Hayward: I will not take any more time on that, because the Master wants to get away and I want to finish up.

Q. The third item included in your total of working capital, McCarter, was your estimate of cash requisites on hand?

A. Yes.

Q. Cash to be kept on hand, which you put down as $1,500,000?

A. Yes.

Q. I think it was shown that that was $200,000 or
26273 $300,000 more than the actual average on hand, was it not?

A. No, it was shown to be between two and three hundred thousand dollars in excess of what was on hand on December 31, 1918.

Q. But not more than the usual average?

A. A great deal less I should say than the average cash on hand as of that date covering a period of years.

Q. Mr. Carter, where is that money kept?

A. At the various branch banks of deposit and National City Bank.

Q. It is all in New York City banks?

26274 A. All in New York City banks.

Q. You know that the New York City banks, unless there is some great desire to show favoritism to a particular bank, pay interest on daily deposits or balances. Does the company get—

A. (Interposing.) Yes, the company gets interest.

Q. Two or three per cent?

A. I do not know what the per cent is for that particular period, but whatever the interest received on deposits amounted to it has been included in the company's revenues from its gas business.

Q. Undoubtedly, but the point I am making is that if you got three per cent, your requirements were a million dollars, we will say, not to beat you down at all—if you got three per cent on your daily balance, in order to give you a 6 per cent return on that same million dollars you would only want to figure $500,000 net working capital, would you not?

A. No, because in determining the rate, Colonel, you take all the company's income, net account, at a given rate, including interest on such a balance as that.

Q. I understand that perfectly. 26276

A. And all that would be included in a rate which allowed, say seven or eight per cent on that amount, would be the difference between what the banks paid, and was included in the income account, and the seven or eight per cent.

Q. You do not propose to separate this cash requirement of working capital from your other capital on which you claim return, do you, Mr. Carter?

A. No, it is all included in it.

Q. But you expect a reasonable return on that the same as you do on your other physical property, do you not?

A. In excess of any return we are getting at the 26277
present time on it. In other words, the amount that we receive in interest on daily balances would diminish the amount which would be required in order to enable us to make a fair return upon that asset.

Q. But that interest you would earn would go in with the other income of the company, not as applied to this particular item at all?

A. Well, it would be applicable just the same. It does not make any difference whether it is applied to that particular item or not. The fact of its being in-

cluded in our income reduces the amount we have got to earn.

Q. If you get three per cent from the banks for the money and six per cent return from the consumers' on it you would get nine per cent?

A. We could not possibly get it.

Q. Well, you would get it if that were added in at the full amount of your cash working capital the same as other capital or property?

A. But you do not understand. In determining the rate the company's income is taken into account.

26279 Q. I understand all that.

A. As, for example, reducing its expenses or augmenting its income beyond what it would get for its gas for a given rate.

Q. I understand all that.

A. All right. To the extent that it got two or three per cent, the amount that would be included in the return at a given rate would not be nine per cent, it would not be six. If the rate computed was seven or eight per cent, it would be three per cent less than that, and would be five so far as that particular item is concerned.

26280 Q. Do you know as a matter of fact that the Consolidated Gas Company gets any interest at all from the National City Bank on its daily balance?

A. Yes, it does.

Q. How much?

A. I do not know at the moment, or during the year 1918, but whatever it was I know it is included in the revenue.

The Master: I remember there was one bank that did not give any interest.

The Witness: I do not think that any of our deposit banks, that we use as a convenience, gives any interest.

The Master: Mr. Teele's statement showed there was one bank did not allow any interest.

Mr. Ransom: There was one bank in which there was what might be called a continuously active account.

The Master: I do not know what you call it, but I know there was one bank you did not get any interest from.

Q. That is what a daily balance is, in continuously active accounts, is it not, Mr. Carter, as you understand it? My account is active and they pay me daily interest on my balances. 26282

A. Well, our account might be less desirable than yours. It is a very undesirable account, because it probably makes a good deal of work for the bank. They have to handle a great deal of coin. It is a great deal of trouble to a bank to handle our daily receipts—great thousands of dollars in quarters and all kinds of coin.

Q. All the banks I have ever seen are glad to get it when it is in pennies, when call money is fifteen per cent.

A. It is not usually so for any length of time.

Q. You testified to this item of the coal that you sold at 14th Street and 42nd Street, on which you 26283
got a profit of 71,000 over and above the amount you paid. Is that a correct statement, Mr. Carter, that such was the case?

A. I do not recall the amount of profit. The facts are in evidence.

Q. That you sold to the New York Edison Company.

A. We sold some coal from 14th Street and 42nd Street to the New York Edison.

Q. And you made $71,000 profit.

A. Whatever was profit was credited to the profit and loss account.

Q. Why didn't you credit it to the cost of making coal?

A. We do not make any.

Q. At 14th Street and 42nd Street?

A. You mean gas.

Q. I should say gas, certainly.

A. We were not using any coal at those stations at a cost in excess of the cost to us of the coal that was sold. Therefore there was no ground upon which we could credit the 14th Street operations or the 42nd Street operations with the profit on that coal transac-

26285 tion.

Q. You do not answer my question. If you used coal up there now you would use it at the market value of coal now, would you not? Suppose you started up those plants.

A. I think they are started up now.

Q. All right, they are going to use some coal up there?

A. They are.

Q. What kind of coal will they use?

A. They will use coal at the current price.

Q. That they buy now?

26286 A. Yes, sir, that they buy now, and I think perhaps some time in reviewing our operations for the winter of 1919-20, or the winter of 1920-21, there may be some theory evolved upon which the expenses for those periods or the cost of gas at those stations might be subject to some correction on account of that profit; but certainly no past transactions could be credited with any of that profit.

Q. You are not in the coal-selling business; why didn't you take that coal over to Astoria? You could get it just as cheaply, could you not?

A. The Astoria Company also sold some coal and made some profit on it.

Q. Did they credit that to cost over there?

A. Yes, they did in that case.

Q. Then don't you think you ought to credit it to cost?

A. We have not any cost to credit it to, Colonel. Of course, this has a bearing upon Mr. Teele's statement of our revenues for the period from 1906 to 1918, inclusive, and there was no expense during that period against which the profit on the coal sold to the Edison Company could on any theory be credited.

Q. But you say there is no operation to which it could be credited in the 14th Street and 42nd Street 26288
plants, yet the credit was made at Astoria.

A. Because Astoria did use some coal at a higher price.

Q. Sure, certainly.

A. And properly credited to the cost of its coal the profit realized on that coal that was sold.

Q. But you do not make any difference between 14th Street and 42nd Street and your other properties when you are putting them into this case, do you, as a gas property necessary and useful to the public?

A. No, we do not make any difference.

Q. You still claim those plants up there are used and useful for the public, do you not? 26289

A. We certainly do.

Q. As reserve plants?

A. Yes.

Q. Even though it would take three weeks to get them going?

A. Even though any consideration, that is the fact.

Q. Yes, and even though it cost $36, or more than $30 a thousand to make gas in them, when you did put them into operation you still claimed them?

A. Exactly.

Q. And if time wears along and the City of New York condemns them for dock frontage property you will expect to make the city pay for them as part of a going gas plant, and as being gas property and valuable as such, will you not, on any condemnation?

A. If they take those properties we should expect them to pay for them, and if there was any expense included by Mr. Teele in that period against which this profit applied he certainly would have applied it.

Q. That coal that was carried up there—I do not
26291 know how much it was, but the coal on which you made $71,000 profit, that would have been included during all the years in material and supplies carried on hand, would it not? I mean this item that we read from this morning included coal, did it not—supplies on hand?

A. Yes. It did not include any of that coal.

Q. But you included this from 1906 on, did you not, this material and supplies?

A. It has been carried in the coal account, of course.

Q. Yes, in material and supplies?

A. In the material and supplies.

Q. And the company has had a return on it?

26292 A. Had a return on it? It has not had a return on half of its investment during that time.

Q. I spoke inadvertently. Theoretically the company claimed a return on it, did it not? For all those years that it lay up there in the coal pile it was put in as the capital of the company?

A. If we claimed it it did not do us any good.

Q. No, but it was part of your capital on which you expected and asked a return?

A. It was included in our materials and supplies as reported to the Public Service Commission every year.

Q. Yes, certainly it was. And then you sold it?

A. Then we sold it.

Q. To an outside concern?

A. To the New York Edison Company.

Q. And now you are going to buy coal at the high price to take its place?

A. Exactly, and our profit and loss account shows the profit from that coal and can at any time, be applied as an offset to any cost, excess cost, of coal at 14th Street and 42nd Street, at any time.

Q. But has not yet?

A. It has not yet, because there has been no ex- 26294
pense to which it could be properly applied.

Q. And in the present status of it it can be used as dividends, can it not, that $71,000?

A. That profit?

Q. Yes. What goes into your profit and loss account?

A. Oh, yes, I think it could, decidedly.

Mr. Hayward: Yes, I think it probably will, too.

The Master: Is that all, Colonel Hayward?

Mr. Hayward: That is all.

The Master: Anything else on cross?

Mr. O'Brien: Except, your Honor, as I said 26295
yesterday, at some time between now and the beginning of the defendant's case if something arises that we want to recall Mr. Carter on we will make application.

The Master: No, I will repeat what I said: Applications to recall witnesses must be made tomorrow morning—all applications.

Mr. O'Brien: I mean something might come up that might impress your Honor as a good reason for recalling the witness, and if it does I will make those representations to you.

The Master: Colonel Hayward, are you prepared to say what your contention is as to the amount of working capital that should be allowed?

Mr. Hayward: I would like to make up, as I expected to do, with the assistance of Dr. Webber—

The Master: You have not got it in mind just yet?

Mr. Hayward: Well, very nearly; yes, sir. I have got to make up the schedule of the items
26297 with reference to the one he has already put in. It would be arrived at by deducting the normal accounts payable, which include their coal and gas, and also the amount payable to these customers, and I expect to cut his cash requirements right squarely in two. I thought I could make more of a deduction for materials and supplies than Mr. Carter's testimony indicates I will ultimately be able to do, but we may have some proof on that. I think there is a larger percentage of that held for the other companies than Mr. Carter has estimated. He does not know of course.

The Master: Any redirect, Mr. Ransom?

26298 Mr. Ransom: I have got to clear up several points that were brought up.

The Master: Can you do it in fifteen minutes?

Mr. Ransom: I would rather let it go over until the morning, if I might.

The Master: It suits me except it might bring on further cross.

Mr. Ransom: It may.

The Master: Do you think you will be able to put in some proof, Colonel Hayward?

Mr. Hayward: I was talking to Major Clark about it. They do not seem to think so; they thought there were some things we could do that were sort of formal, but Major Clark tells me they decided not to do that.

The Master: We will adjourn to 9:30 tomorrow.

Mr. Ransom: And any application for the recall of other witnesses will be made tomorrow?

The Master: Yes, and I wish you would have that stipulation prepared waiving signatures.

Mr. Ransom: I will have that here in the morning. 26300

Adjourned to Thursday, December 18, 1919, at 9:30 A. M.

Last Complainant's Exhibit 403.
Last Defendants' Exhibit AA40.

26301

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, Etc., *et al.* 26305

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 18, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 26306
MR. O'BRIEN, Counsel for defendant Swann.

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Mr. Ransom: Before going ahead with Mr. Carter, I might just get this out of the way so the defendants will be looking it over.

Mr. Chambers referred a few days ago to the fact that when Mr. Armstrong was on the stand, at page 4549 of the record, your Honor directed him to make up and produce a statement showing 26307 the gas production expenses, excluding gas storage, at the 21st and the 99th Street stations, month by month for each of the months during the period of the government operation of the toluol plant, the gas production account as submitted to the Government's auditors and passed upon by them. I have made up these statements, or Mr. Armstrong has, and I ask to have them marked for identification.

The Master: Are there two statements there?

Mr. Ransom: Yes, one for each station.

The Master: Indicate which is which.

Mr. Ransom: One is for the 99th Street station.

Marked Complainant's Exhibit 404 for identification.

Mr. Ransom: The other is for the 21st Street station.

Marked Complainant's Exhibit 405 for identification.

Mr. Chambers: That concluded, did it, all the information?

26309 Mr. Ransom: That is all, yes.

Mr. Chambers: I have just one figure of gas mains.

Mr. Ransom: You asked to have the details given month by month. They were given in an exhibit prepared for the whole period.

ROBERT A. CARTER, resumes the stand.

RE-DIRECT EXAMINATION BY MR. RANSOM:

Q. Mr. Carter, you were interrogated upon cross-examination by Mr. Chambers as to the dividends paid by the Consolidated Gas Company upon its stock in certain years. Can you give the average dividends
26310 paid per share of outstanding stock from 1884 to the present time?

A. 6.26 per cent.

Q. That is upon par value?

A. Upon par value, yes.

Q. You were asked on page 6494 of the mimeograph record of testimony concerning an item of $4,989.37 in the suspense account, for taking down 44th Street station building. What does that item cover?

A. That represents the expense of taking down certain portions of the plant that were not on the

part taken by the city, but that were rendered useless by reason of the city cutting right through the plant.

Q. That is, the money that is tied up in that item is the money the company had to lay out in taking down buildings or portions of buildings on the part of land not taken by the city?

A. That is the case, yes, sir.

Q. Certain buildings were cut right in two?

A. Right in two.

Q. Mr. Chambers offered in evidence some days ago the order made by the Public Service Commission in case No. 2235 on October 13, 1907. Have you produced here a copy of the opinion of the Commission accompanying such order upon its adoption? 26312

A. I have, yes.

Q. And is this such copy (handing witness)?

A. That is the copy.

Mr. Ransom: The order being Defendants' Exhibit XX. I offer in evidence the opinion of the Commission as adopted contemporaneously with the order.

Mr. Chambers: I object to it as being incompetent, irrelevant and immaterial. The Court has a right to refer to the opinion anyway.

The Master: If I have a right to refer to it, it cannot do any harm to mark it in evidence. 26313

Marked Complainant's Exhibit 406.

Q. Mr. Carter, you were asked a number of questions regarding the operations and finances of the National Coal & Coke Company. Have you since prepared a statement showing in summary form the capital stock of this company, the dividends paid, the salaries paid, and the amount of money in surplus or

deficit account for the eighteen years this company has been in operation?

A. I have, yes, sir.

Q. And is this such statement (handing witness)?

A. It is.

Q. And it is correct to your knowledge?

A. It is.

Q. And if interrogated separately by me as to each of the matters herein set forth your answers would be and are in the figures which are set forth here?

26315 A. That is the case.

Mr. Ransom: I offer in evidence this statement.

Mr. Chambers: I will object to it as incompetent, irrelevant and immaterial.

The Master: Objection overruled.

Mr. Chambers: Exception.

Marked Complainant's Exhibit 407.

The Master: I thought you said the capital stock was $100,000.

The Witness: This is the coke company.

The Master: I see, $50,000?

The Witness: Yes, sir.

26316 Q. In other words, the average dividend paid by the National Coal & Coke Company has been only 7.72 per cent?

A. That is the case, yes, sir.

Q. Over eighteen years?

A. Yes, sir.

Q. And what has been the largest total payment of salaries to the officers of the National Coal & Coke Company in the eighteen years?

A. $3,000 per annum.

Q. For the first two years?

A. For the first two years only. It was $1,000 the next year and dropped to $800 per annum, and at the present time it is $950 per annum.

Q. To your knowledge have the defendants been asked for and have they been given access to the books and records of the National Coal & Coke Company?

A. They have; yes, sir.

Q. Several months ago?

A. Yes, sir.

Q. What were the relative proportions of coal and water gas made at Astoria during the twelve months ended October 31, 1919? 26318

A. The production, entire production, was 10,655,268,000 cubic feet, of which 4,270,295,000 cubic feet or forty per cent was coal gas and the balance was water gas.

Q. What were the percentages of coal gas of the entire quantity of gas made by and for the Consolidated?

A. Forty per cent, which is about the relation between the coal and water gas plants. That is the ratio of the coal gas plant capacity to the total capacity at Astoria.

Q. Of the total quantity of gas made by and for the Consolidated Gas Company, what part of that was coal and what part was water? 26319

A. The total quantity of gas made by and for the Consolidated Gas Company was 19,575,100,000 cubic feet, of which the coal gas made at Astoria was 21.8 per cent. So I would say 22 per cent coal gas and 78 per cent water gas would be an accurate figure or reliable figure.

Mr. O'Brien: The last sentence I move to strike out, your Honor, as not responsive.

The Master: Motion denied.

Mr. O'Brien: As expressing an opinion of the witness not called for by the question and not admissible here.

The Master: Motion denied.

Mr. O'Brien: Exception.

Q. Mr. Carter, are the computations set forth in Complainant's Exhibits 38 and 39, with respect to transferred gas—they have been made under your direction?

A. They have; yes, sir.

Q. And you have from time to time gone over

26321 them and checked portions of them?

A. I have.

Q. And they are correct?

A. They are correct; yes, sir.

Q. And have the defendants had access to them?

A. They have had access to them, and they still have my original copy of the figures, I think.

Q. Of Exhibit AA39?

A. Yes, of the 1918 figures.

Mr. Ransom: I offer in evidence the Defendants' Exhibit AA39 for identification and AA38 for identification.

Mr. O'Brien: Why, your Honor, these papers have never been verified or justified in any way.

26322 We have not had the underlying data, we have not had the men on the stand who made these computations, and it is entirely inadmissible. Mr. Carter just says these are the underlying figures. I object to it as incompetent, irrelevant and immaterial.

The Master: I think I will sustain the objection.

Mr. Ransom: The defendants had full opportunity to go over them.

Mr. O'Brien: I am not going to waste the time of the Court—

The Master: Why do you say a word when I have sustained your objection?

Mr. O'Brien: But, your Honor, I am going to comment on this constantly made remark, "the defendants having had access to them."

The Master: I do not want that: stop it. I will sustain the objection.

Mr. Ransom: Your Honor will allow me an exception.

The Master: Yes. I do not want to go any 26324
further than the regular books of account.

Q. Mr. Carter, did the change in the method of allocating the gas unaccounted for as made late in 1918 increase or decrease the amount payable by the Consolidated Gas Company for gas transferred to it from other companies in that year?

A. It reduced the amount that the Consolidated Company would otherwise have had to pay, to the amount of $89,213.73.

Mr. O'Brien: Your Honor, I am going to move to strike out that question and answer.

The Master: Motion denied.

Mr. O'Brien: As calling for computations that 26325
the witness has not made.

The Master: Motion denied.

Mr. O'Brien: And there is no underlying data here to prove the correctness of the statement made.

Mr. Ransom: I just offered it.

The Master: Motion denied.

Mr. O'Brien: Exception.

Q. Mr. Carter, have there been any substantial additions to the plant of the Astoria Light, Heat & Power Company during the past six or seven years?

Mr. O'Brien: Objected to as not re-direct.

The Master: I will sustain that objection.

Mr. O'Brien: I will sit here another week and into January, if necessary, to go into these matters, but they are not going to be slipped over in this case—coming in here, at the end of this case, to put in a direct case. I am going to object, your Honor, to anything here that is not re-direct.

The Master: I wish you would make your objection and then stop talking.

26327 Mr. Ransom: On what ground is that objection sustained?

The Master: I have not gone into Astoria investment at all. Why do it now?

Mr. Ransom: They have gone into a number of matters in regard to it.

The Master: No, I do not think so. I will sustain the objection.

Mr. Ransom: Exception.

The Master: I am not going to decide this case on the investment in Astoria.

Mr. Ransom: But in order to get a complete picture, in view of the questions which have been asked this witness on cross-examination, with
26328 respect to what has been done at Astoria, I think that question is proper.

The Master: No, I think we better not have it.

Mr. Ransom: Exception.

Q. In 1913, Mr. Carter, did the Astoria Light, Heat & Power Company apply to the Public Service Commission for the First District for authority under the Public Service Commissions Law to issue certain bonds and stock for capital purposes?

Mr. O'Brien: Same objection, your Honor.

A. It did.

Mr. O'Brien: I tried to get into the question of the capitalization of all these companies upon the holdings, and I was denied that privilege.

The Master: I will sustain the objection.

Mr. Ransom: On what ground is that?

The Master: On the same ground. I am not going into the capital investment of the Astoria Company.

Mr. Ransom: What I offer to show is that from the time when the Astoria plant was started down to 1913, certain capital expenditures were 26330
made by the Astoria Company, then under the jurisdiction of the Commission; that in 1913 the Astoria Company applied to the Public Service Commission for the First District for authority under the Public Service Commissions Law to issue approximately fourteen and one-half millions of its stocks and bonds for capital purposes under the Public Service Commissions Law, and submitted therewith an inventory and list of all those capital expenditures and the vouchers underlying them; that as was its duty under the Public Service Commissions Law, the Public Service Commission proceeded to check that list 26331
and those vouchers—

Mr. O'Brien: Your Honor, I object to this long statement being made. He can state the point of his offer without getting a record here involving matters not yet proven.

The Master: I am going to let him make his offer, as I have let you make yours. It doesn't prove a thing.

Mr. Ransom: That the Commission inquired into the expenditures, the existence of the property, and the necessity of such expenditures for

capital purposes, and as a result on May 14th, 1914, adopted a resolution authorizing the issuance of that amount of stocks and bonds by the Astoria Company and consenting to the acquisition thereof by the Consolidated Gas Company.

Mr. O'Brien: Was that while you were counsel to the Public Service Commission?

Mr. Ransom: No, it was not.

The Master: I will let my ruling stand. I am not going into the invested capital of the Astoria Company.

26333 Mr. Ransom: I should supplement this offer of proof by the documentary evidence showing the action of the Commission certifying to the expenditure by the Astoria Light, Heat and Power Company of approximately fourteen and a half million dollars for capital purposes up to that time.

The Master: I won't receive it.

Mr. Ransom: And I should then prove the amount of additions and withdrawals under the supervision of the Commission since that time, making the total amount of present capital investment in the Astoria plant and equipment—

26334 Mr. O'Brien: The result of all that will be to disqualify this man as counsel in this case, just as Judge Lacombe is disqualified from being counsel for the complainant in this case.

Mr. Ransom: This was in 1914, when I was in no way connected with the Commission, any more than Mr. O'Brien.

Mr. O'Brien: You said you would present the additions and withdrawals approved by the Commission since that time.

Mr. Ransom: I said nothing of the sort.

Q. Mr. Carter, you were interrogated as to taxes paid by the Astoria Light, Heat & Power Company upon property used by it as a part of the jointly used facilities, and in turn billed by the Astoria Company to the Consolidated Gas Company and paid by it. Will you state the amounts of such taxes?

A. In 1919, $93,976.35.

Q. What was the amount for 1918?

A. In 1918 it was $101,551.15.

Q. What are the details of the amount for 1919?

| | |
|---|---|
| A. On the Astoria Tunnel | $70,570.20 |
| On the Ravenswood Tunnel | 9,330.95 |
| On the 48 inch and 60 inch mains on Long Island connecting Ravenswood and Astoria plants | 11,497.36 |
| On the 48 inch Harlem River main of the Standard Company | 2,637.84 |
| Making a total of | $93,976.35 |

26336

Q. What are the details of the 1918 total?

A. For the 1918 total the details are:

| | |
|---|---|
| On the Astoria Tunnel | $76,030.97 |
| On the Ravenswood Tunnel | 10,277.20 |
| On the 48 inch and 60 inch mains on Long Island connecting the Ravenswood and Astoria plants | 12,397.58 |
| On the 48 inch Harlem River main | 2,845.40 |
| Making a total of | $101,551.15 |

26337

Q. You have stated the total amount of taxes paid by the Astoria Light, Heat & Power Company, upon its property in the calendar year 1918, to be $590,107.35. Can you give the total taxes assessed against that company for the calendar year 1919?

A. $592,253.28.

Q. How much of that in 1919 was a tax upon real estate?

A. $348,814.45.

Q. What was the real estate tax rate in the Borough of Queens this year?

A. 2.37.

Q. All of the Astoria property is located in the Borough of Queens?

A. All of the Astoria property is located in the Borough of Queens.

Q. Do you know upon what assessed value of
26339 real estate the sum you have given is computed?

Mr. O'Brien: I object to that as not redirect, and as incompetent, irrelevant and immaterial.

The Master: I will sustain the objection. I can figure it myself.

Mr. Ransom: Exception

Q. Do you know the total amount of taxes paid by all of the gas companies of the Consolidated system?

Mr. Chambers: I object to that as incompetent.

The Master: Objection sustained.

26340 Mr. Ransom: Exception.

Q. Do you know what the total amount of taxes paid by the various companies of the Consolidated system amount to in cents per thousand cubic feet sold?

Mr. Chambers: I object to that.

The Master: Objection sustained.

Mr. Ransom: Exception.

Q. Mr. Carter, you have been interrogated regarding the report of George E. Woods, engineer, dated May 1, 1919, to which reference has been made from time to time during this trial as to jointly used fa-

cilities. Have you, as secretary of the Consolidated Gas Company produced here a copy of that report?

A. I have.

Q. Have you as secretary also brought here a copy of the resolution of the executive committee of the Board of Trustees of the Consolidated Gas Company under date of June 24, 1919, in relation to the subject-matter of that report?

A. I have.

Q. Are these copies authenticated by you correct, to your knowledge?

A. They are, yes, sir. 26342

Mr. Ransom: I offer in evidence the report and the resolution.

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial, as not being re-direct, and as being in part matters concerning which I was not allowed to introduce evidence during the cross-examination.

Mr. Chambers: I object to it for the same reason, and on the further ground that they are hearsay and secondary evidence and not properly proven.

The Master: Objection sustained.

Mr. Ransom: They have cross-examined wit- 26343
nesses, both Mr. Carter and the other witnesses at great length regarding this report. I suppose probably, if it were all put together, there is ten days' examination on the subject-matter of this report during the last five months.

The Master: We can get along without it.

Mr. Ransom: Exception.

Q. Mr. Carter, you were interrogated by Mr. Chambers regarding your testifying before the Stevens Investigating Committee; and he read a portion of the testimony. Upon that occasion were you also

asked by counsel the following questions, and did you make the following answers, appearing at page 207 of Vol. I of the printed record of the investigation: "Q. Now, referring you to Schedule D of the report headed 'Statement of Assets and Liabilities, June 30, 1904,' the item 'Real Estate and Plant' $19,673,075.42, I wish you would take the report and tell the committee just what properties of the Consolidated Gas Company you included in that item as a statement of the value thereof? A. I would like to explain to the committee that this statement is,
26345 does not purport to be, the balance sheet of the company. It distinctly states here that that is not the company's balance sheet, nor does it furnish the cost of the property." Were you asked that question at that time, and did you make that answer?

Mr. O'Brien: I object to that as not being re-direct.

The Master: Yes, I will allow this.

Mr. O'Brien: Your Honor, this will open up the whole of this inquiry. There are a lot of matters in there that I would like to have put in the record.

The Master: I have ruled on the question.

Mr. O'Brien: Exception.

26346 A. Yes, that is correct.

Q. Were you also asked this question by Mr. Hughes, and did you make this answer: "Q. Mr. Mathewson asks me to ask you whether in connection with this depreciation, by which I understand him to mean the difference between the book value of your plant and the amount which you state as its actual value in your report of June 30, 1904, you did not take into consideration the removal to Astoria and the abandonment of your generator plant, is that so? A. That was considered, yes, sir."

A. Yes.

Mr. O'Brien: I make the same objection.

The Master: What generator plant was that, Mr. Carter?

The Witness: Reference is undoubtedly made in that question to the manufacturing, gas generating plants in the Borough of Manhattan.

The Master: All of them?

The Witness: All of them.

Q. Mr. Carter, you were interrogated by Mr. Chambers regarding this matter of the tax reports made by the Consolidated Company during the first four years of operation under the Franchise Tax 26348
Law, and the testimony given by you before the Stevens Investigating Committee relative to such reports. Will you explain the facts and circumstances regarding such reports, and the portion of your testimony read by Mr. Chambers?

Mr. O'Brien: Your Honor—

The Master: I am afraid that is too wide a question.

Mr. Ransom: It is the form of question that the Supreme Court of the United States has indicated should be asked when they read from the testimony of a witness in some prior proceeding something which they say tends to contradict him, then he is entitled to opportunity, 26349
in the precise form in which I have given it, to explain the circumstances of his testimony and what was referred to.

The Master: Certainly.

Mr. Chambers: That is what I am asking him.

Mr. O'Brien: I object to it.

The Master: You are asking a good deal more than that.

Mr. Chambers: Isn't he in error when he says I read from the report of the Stevens Investigating Committee?

A. I read from his testimony in the suit between the Consolidated and Mayor.

The Master: It doesn't make any difference what you read from, you interrogated him about that report.

Mr. Chambers: About an affidavit he made.

Mr. O'Brien: Your Honor, there will be no end to this case. The late Simpson testified to
26351 this in the old case. It has been gone into in detail, and I will be compelled to come in and put the whole record in on the differences between Mr. Simpson's statement as to the properties, and Mr. Carter's, after Simpson's got to the clearing house of Carter.

Mr. Ransom: Simpson's testimony is all in.

Mr. O'Brien: I object to it as not being redirect, and going over matters that serve no useful purpose.

The Master: I will let him state the circumstances under which he gave the testimony. What particular point in his testimony do you want to
26352 meet?

Mr. Ransom: They have endeavored to create the impression that there was some disparity between what was set forth in one of these early reports under the new Franchise Tax Law and the company's investment in its property as shown by books at that time. I don't know just what fully they have in mind.

Mr. Chambers: He swore in the tax report that the franchise was of no value, of a nominal value, because they didn't pay anything for it. He swore to that under oath, as positive, clean-

cut direct. Now he says the franchise is of the value of seven million dollars and something. It cannot be explained away.

Mr. Ransom: It was all gone into on the prior trial, and the Supreme Court of the United States never has held $7,781,000 of franchise value was excluded.

Mr. O'Brien: It did not hold any such thing.

Mr. Ransom: It did.

The Master: As I understand it, Mr. Chambers brought out by his cross-examination the fact that this witness in an affidavit or report, 26354
or an affidavit to a report—

Mr. Chambers: To a report.

The Master: Stated some years ago—

Mr. Chambers: In 1904.

The Master: That the franchise was of no value.

Mr. Ransom: That is not quite what he did state.

The Master: He stated something which Mr. Chambers construes to mean that.

Mr. Chambers: He stated the franchise was —the only value of a franchise was what you paid for it, and the city did not charge anything 26355
for this franchise, and, therefore it was nominal and practically of no value.

The Master: I will not permit this kind of direct-examination. Get the testimony and let us find out what we are talking about.

Mr. Ransom: There are two things that were gone into.

Mr. O'Brien: I will state this will be—

The Master (interrupting): I don't want you to state anything.

Mr. O'Brien: Get Carter's testimony in the old case.

Mr. Ransom: It is mostly in.

The Master: Get the testimony and we will see.

Mr. Chambers: The Master is correct, because the question is too broad and too sweeping.

Mr. Ransom: There were two things to which Mr. Chambers directed attention. One was with respect to the matter of the franchise value, what was stated.

The Master: All right, you agree—

Mr. Ransom: Well, if there was such a thing,
26357 it is of course not accurately stated, what was set forth. The second item was with respect to a claim of variation between what was set forth in this report as value of the plant for tax purposes, as contrasted with book value.

The Master: That you have already covered.

Mr. Ransom: No, I have not.

The Master: Haven't you already pointed out that this witness testified in the Stevens Investigation that his tax report was present value as distinguished from cost, what he figured the value to be.

Mr. Ransom: He is entitled under the au-
26358 thorities to an opportunity to explain what were the circumstances under which the early reports were made.

The Master: I agree with you that he is entitled to explain the circumstances, but I won't agree with you that this form of question is correct, and I won't allow this question. I am going to let you ask upon re-direct anything that will clear up a statement made on cross, if the witness's attention is directed to some particular thing.

Q. With respect to this figure given in connection with real estate and plant in the 1902 tax report, I

believe it was June 30, 1902, and the testimony which you gave regarding that before the Stevens Committee, as it has been read in evidence here, will you state the facts and circumstances in relation to that testimony?

The Master: I won't take that.

Mr. Ransom: What does your Honor want?

The Master: What the United States Supreme Court undoubtedly said, and what you have in mind is that you can bring out from the witness the facts and circumstances, but I do not think the United States Supreme Court ever permitted that kind of a question. Assume that they permitted this kind of inquiry. 26360

Q. Do you remember this matter about which you were asked on cross-examination, Mr. Carter?

The Witness: I do remember it.

The Master: Do you remember the making of this report to the Railroad Commission, I think it was.

The Witness: I do, I remember the circumstances under which that report was made.

Mr. O'Brien: Your Honor, I rise to make an objection to the inquiry on the ground that counsel now is endeavoring under one pretext to introduce rebuttal testimony of this witness to offset the testimony of the deceased Simpson. 26361

The Master: I won't worry about Simpson.

Mr. O'Brien: They are trying now to controvert Simpson's testimony after having introduced it.

The Master: I will let this witness explain any testimony given on cross by proper questions. When was this report made about which we are talking now, what year?

Mr. Ransom: The year to which it particularly is directed was the report as of June 30, 1902.

The Master: June, 1902 or 1904?

Mr. Ransom: 1902.

The Witness: Both were involved in the questions.

Mr. Chambers: 1904, sworn to in 1905.

Mr. Ransom: First as to the one which you were interrogated about before the Stevens Committee by Mr. Hughes.

26363 The Master: That was 1904.

Mr. Ransom: That was 1902, the one concerning which I have asked the question.

Mr. Chambers: I did not ask anything about such a report.

The Master: These reports were made in pursuance of what act, Mr. Carter?

The Witness: These reports, your Honor, were made in pursuance to a law passed in 1899, called the Special Franchise Tax Law. It was a new law, no one was certain as to its—

The Master (interrupting): Never mind that.

Mr. O'Brien: I object to that.

26364 The Master: What are you objecting to?

Mr. O'Brien: The Supreme Court Judge on the witness stand now telling us what the law meant, what its purpose was.

The Witness: Nobody knew what it meant at that time.

The Master: I will strike out the statement that nobody knew what it meant at that time. As I understand it, Mr. Carter, these reports were made in pursuance of the requirements of this law of 1899, the Franchise Tax Law?

The Witness: Exactly.

The Master: And that Franchise Tax Law, as you understood it, when these reports were made, required you to state what?

The Witness: Required us to state the value of our property. What that meant then, or even what it means now—

The Master (interrupting): Wait a minute. It required you to state value of property?

The Witness: It did on some basis or other.

The Master: In making up those reports, what basis did you have in mind in stating the figures of value? 26366

Mr. O'Brien: Objected to as incompetent, irrelevant, immaterial; it would have been objectionable in any old proceeding, and doubly objectionable here under the circumstances under which it is asked.

The Master: Objection overruled.

Mr. O'Brien: It is asking this witness in effect to interpret the meaning of a law. They paid enough money to counsel at that time and since to get a correct interpretation of the law.

The Master: Objection overruled. On what basis were your figures placed in this report?

Mr. O'Brien: Same objection. 26367

The Witness: The basis of the tax law, which provided that property of that character, of the character that we were putting a value on, should be valued at the amount for which it would sell under ordinary circumstances. That law, your Honor, which was interpreted—

The Master: I do not want any interpretation of it. I want to know the basis upon which your figures were made.

Mr. O'Brien: Same objection and exception.

The Master: I think in this way we are getting what the United States Supreme Court says you can get, and the circumstances under which it was made.

Mr. Ransom: Perhaps I can ask a few questions to bring that out.

Q. At the time that these reports were made had the meaning of those provisions of the statute been passed on by the courts?

Mr. O'Brien: Judge Ransom knows that is not a proper question, and I object to it.

26369 Mr. Ransom: I know it is proper.

The Master: I think it is proper. Objection overruled.

Mr. O'Brien: Exception.

A. It had not been at that time, no, sir.

Q. Was the matter in litigation at that time?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial, calling upon the witness for a legal opinion.

Mr. Ransom: As to whether it was being litigated?

Mr. O'Brien: Yes, sir, whether something is in litigation or not is a legal proposition.

26370 The Master: Same ruling.

Mr. O'Brien: He has not been admitted to the bar yet.

The Master: Mr. O'Brien, for six months I have been trying to get you to understand that this is a court, presided over by a *de facto* judge, if I may so call myself, and you have got to stop this constant argument and making of statements and interruption. It is not right. Stop it.

Mr. O'Brien: Have you said anything to counsel here? He addressed an inquiry to me.

The Master: I have told him several times what I think of his doing that particular thing, but you are the worst offender.

Q. In the first three reports made under the new law, that is, for 1899, 1900 and 1901, was any valuation given for real estate and plant?

Mr. O'Brien: Objected to.

Mr. Chambers: I object as incompetent, irrelevant and immaterial. The report speaks for itself and it is not here.

The Master: Inquiry was made as to that report? 26373

Mr. Ransom: I am simply asking whether any figure at all was given.

Mr. Chambers: Not as to that, not as to any report. I just called his attention to an affidavit he made in one certain report of 1904.

The Master: What is your contention about that?

Mr. Ransom: I want to bring out the full circumstances with respect to this testimony.

Mr. Chambers: Well, then, I will read the whole testimony, too.

Mr. Ransom: I think your Honor will see the materiality of it and allow the question. 26372

The Master: Read the question.

(Question read.)

The Master: Objection overruled.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

The Witness: No, all reports were left blank in that respect.

Q. Were you advised by counsel as to the basis on which gas holders and gas plants should be put in the reports from 1902 to 1904?

Mr. Chambers: I object to that.

The Master: I will take a yes or no answer, which will not do any harm.

A. We were advised.

Q. Did you act on that advice?

Mr. O'Brien: Same objection and exception.

Mr. Chambers: Same objection.

A. Yes.

Q. And upon what basis did you give figures as to value of gas holders and gas plants?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

26375 Mr. O'Brien: I object as incompetent, irrelevant and immaterial, and as asking the witness now to distort the language of the statements made in a sworn statement.

The Master: Objection overruled.

Mr. O'Brien: Exception.

Mr. Chambers: Exception.

A. Upon the basis of the amount for which that kind of property would sell under ordinary circumstances.

Q. If sold detached from the plant?

Mr. O'Brien: Objected to as leading, and on the other grounds already mentioned.

26376 The Master: Objection overruled.

Mr. O'Brien: Exception.

A. Our understanding being that if sold under ordinary circumstances these properties would bring very much less than reproduction cost new, because of their unsuitability for other use than for the manufacture of gas which was deemed not to be an ordinary use.

Mr. O'Brien: I move to strike it out as not responsive, as giving conclusions of law, and as being a distorting of the statement made in the sworn affidavit of the witness.

The Master: Motion denied.

Mr. O'Brien: Exception.

The Witness: The variation—

The Master: I won't take that.

Q. Well, have you finished your statement of the basis?

Mr. O'Brien: I object to that, same objection.

The Master: That is enough.

Mr. Ransom: I think he has not.

The Master: I think he has. The next question.

Q. Were the figures given in the report to the State Board of Tax Commissioners as of June 30, 1902, based on figures prepared for the local tax board in January of that year? 26378

Mr. O'Brien: Same objection.

Mr. Chambers: Same objection.

The Master: Objection sustained.

Mr. Ransom: On what ground?

The Master: On the ground it is immaterial.

Mr. Chambers: I also object on the ground that the report speaks for itself, it is not in evidence, and it is not evidence.

Q. On what basis were the figures for 1903 and 1904, made up? 26379

Mr. O'Brien: Same objection.

The Master: For what?

Mr. Ransom: For the report for the State Board of Tax Commissioners.

The Master: For land and buildings or for holders?

Mr. Ransom: For plant and equipment.

The Master: I will allow it.

Mr. Chambers: Same objection.

Mr. O'Brien: Exception.

The Witness: The reports for 1903 and 1904, were based upon the report for 1902, that is the figures given in the 1902 report, were adjusted in accordance with the net additions to the properties as shown by the books for those years.

The Master: It is made on the same basis?

The Witness: It is made on the same basis, there was no recomputation of value, there was simply a change according to the additions and withdrawals.

Q. In the determination of this 1902, 1903 and
26381 1904 figure, was there taken into account what was then deemed a probability that the city authorities would compel the company to remove its manufacturing plant from the Borough of Manhattan?

Mr. Chambers: Objected to.

Mr. O'Brien: I object to it on the ground previously stated.

The Master: I won't take that because it is already answered in another form.

Mr. Ransom: Exception.

The Master: How about this franchise question. Do you want to go into that?

Mr. Ransom: The volume of the record I
26382 want is not here, I will have to send for it.

The Master: Which record?

Mr. Ransom: The Supreme Court paging. There are two or three references I can get more quickly out of that record, if I have it. I have here the Circuit Court record, and my notes give the reference to the Supreme Court record. I can trace it out in a few minutes, but I can get that volume here in a few minutes and save time.

Q. Mr. Carter, can you give me for each of the years, 1905 to 1918, as of December 31st, in each

year, the amount of cash in the banks and on hand of the company?

Mr. O'Brien: Same objection, not re-direct.

A. I can, yes, sir.

Q. Will you do so?

A. In 1905, as of December 31st, we had in banks $4,933,862.12, and cash in offices and stations, $20,360.00.

Q. Give us the figures for each year?

A. In 1906, we had $371,436.62 in bank, and in offices and stations, $19,860.00; in 1907, we had $475,255.65 in bank; and in offices and branches, 26384
$24,360.00.

In 1908, we had $6,355,818.08 in bank, and in offices and stations, $24,880.00.

In 1909, we had $1,827,897.60 in bank, and in offices and stations, $28,980.00.

In 1910, we had $1,154,755.38 in bank, and in offices and stations, $30,780.00.

In 1911, we had $3,562,261.90 in bank, and in offices and stations, $31,470.00.

In 1912, we had $1,239,113.38 in bank, and in offices and stations, $33,635.00.

In 1913, we had $5,765,670.00 in bank, and in offices and stations, $36,520.00. 26385

In 1914, we had $2,714,305.58 in bank and in offices and stations, $36,820.00.

In 1915, we had $2,089,124.99 in bank, and in offices and stations, $38,500.00.

In 1916, we had $2,471,599.96, and in offices and stations, $40,100.00.

In 1917, we had $1,759,102.72 in bank, and in offices and stations, $41,500.00.

In 1918, we had $1,256,292.36 in bank, and in offices and stations, $41,700.00.

Q. Can you give me the amounts due from sundry consumers as of December 31, in each of those years?

Mr. O'Brien: Your Honor, I object to this as not being re-direct, there wasn't any attempt made to examine the witness as to working capital in the intervening years.

The Master: I think there was enough on cross to justify this re-direct.

Mr. O'Brien: Exception. I object to it on the further ground that the claim is made by the complainant that moneys received from investment in other than the gas industry of the complainant, are not in this case, and are not to be
26387 considered as part of the revenue, and that the testimony of the witness apparently includes revenues from all sources as part of the cash on hand referred to, and on this ground I move to strike out the last questions and answers relating to the cash on hand of the years 1906 to 1918, inclusive.

The Master: Motion denied.

Q. The amount due from sundry consumers?

A. December 31, 1905, $1,857,826.51. Do you want the accounts receivable also for instalments?

Q. Yes, accounts receivable instalments, and accounts receivable branches, for each of those years.

26388 The Master: Have you a tabulation made up there?

Mr. Ransom: No, not in the form I can hand it in.

The Witness: I can check the items so it can be copied very easily.

The Master: Can you give the stenographer that sheet?

The Witness: Yes (continuing answer): 1905, sundry consumers, $1,857,826.51; accounts receivable instalments, $1,725.75; accounts receivable branches, $7,931.78.

1906, sundry consumers, $2,822,264.30; accounts receivable instalments $2,423.20; accounts receivable branches, $17,234.09.

1907, sundry consumers, $3,138,107.83; accounts receivable instalments, $1,889.95; accounts receivable branches, $18,565.84.

1908, sundry consumers, $3,386,132.86; accounts receivable instalments, $2,250.50; accounts receivable branches, $18,147.75.

1909, sundry consumers, $3,334,294.69; accounts receivable, instalments, $2,366.12; accounts receivable, branches, $29,495.69. 26390

1910, sundry consumers, $3,347,850.46; accounts receivable, instalments, $2,021.15; accounts receivable, branches, $22,249.81.

1911, sundry consumers, $3,249,186.68; accounts receivable, instalments, $4,737.45; accounts receivable, branches, $16,726.81.

1912, sundry consumers, $3,269,096.37; accounts receivable, instalments, $2,824.32; accounts receivable, branches, $10,450.85.

1913, sundry consumers, $3,292,429.65; accounts receivable, instalments, $36,752.00; accounts receivable, branches, $11,406.48.

1914, sundry consumers, $3,474,617.94; accounts receivable, instalments, $4,276.01; accounts receivable, branches, $28,800.98. 26391

1915, sundry consumers, $3,393,042.39; accounts receivable, instalments, $66,296.86, accounts receivable branches, $38,388.16.

1916, sundry consumers $866,050.28; accounts receivable, instalments, $19,617.93; accounts receivable, branches, $60,563.27.

1917, sundry customers, $908,519.68; accounts receivable, installments, $34,978.87; accounts receivable, branches, $97,401.83.

1918, sundry consumers, $941,818.18; accounts receivable, instalments, $12,829.63; accounts receivable, branches, $141,326.72.

Q. Mr. Carter, from your knowledge of the Consolidated Gas Company affairs, do you know of any reason why the operating figures for a twelve months period, ending October, 31st, of any year, say 1919, does not cover and include all of the things which would happen in a calendar year?

Mr. Chambers: I object to that as incompetent, irrelevant and immaterial.

26393 Mr. O'Brien: Same objection, your Honor. It is not a matter of expert testimony; it is a matter that the Court only can pass upon.

The Master: Yes, I am going to sustain that objection.

Mr. Ransom: I offer to show by this witness, who is probably better qualified to know the facts than anyone else, that there is nothing about a year ending October 31st, which happens to be the tax year for certain purposes, which is not just as typical as a year ending December 31st.

The Master: I will sustain the objection.

Mr. Ransom: All of the things which happen,
26394 in one twelve-month period happen in another.

The Master: I do not argue it with you, but I have my own views about it. Objection sustained.

Mr. Ransom: Exception.

Q. Mr. Carter, since September 12, 1919, have the books and accounts of the Consolidated Gas Company been kept in the regular course as theretofore?

Mr. O'Brien: Same objection, as not being re-direct.

A. They have.

The Master: How is that re-direct?

Mr. Ransom: It is not perhaps strictly re-direct, but it was prompted by certain questions which Mr. Chambers directed attention to. I will state very frankly my purpose in it. In view of certain questions asked by Mr. Chambers, the 1919 books, as received in evidence, were received on September 12th. I want to make it perfectly clear in this record that the books contain the entries up to this date.

Mr. Chambers: I object to it on the ground it is incompetent, irrelevant and immaterial. There is no proof how they were kept theretofore—no good proof, anyway. 26396

The Master: I do not think I will take Mr. Carter's testimony as to their being kept in the same form. Mr. Brundage is here.

Mr. Ransom: I will put Mr. Brundage on if you think it is necessary.

The Master: I do not think it is necessary.

Mr. Ransom: Will your Honor rule that the 1919 books with entries subsequent to September 12th, are in evidence?

The Master: No, I will let you recall Mr. Brundage to do that. You want to prove it down to October 31st, do you?

26397

Mr. Ransom: Yes.

The Master: I will let you recall Mr. Brundage.

Mr. Ransom: We may want to prove it to the present time.

Q. Mr. Carter, you were interrogated by Mr. O'Brien as to changes in your loans to affiliated and other companies during 1919, with reference to the claimed deficit of $2,000,000 in operating expenses of the gas business. During 1919, have you in fact readjusted and reduced these loans to the extent of $2,000,000, so as to provide for this situation?

Mr. O'Brien: Just a minute. That is not re-direct.

Mr. Ransom: That is exactly re-direct.

The Master: Yes, it is. The witness already has testified on the cross that the loans were reduced, and now he wants to find out practically to what extent they were reduced. I will sustain an objection to the question, that is the better way.

By the Master:

Q. You testified, Mr. Carter, that the loans to
26399 affiliated company were reduced this year. Do you recall that?

A. I do recall that.

Q. To what extent were they reduced? What is the figure?

Mr. O'Brien: I make the same objection, your Honor, to your questions.

The Master: That objection will be overruled.

A. The loans with respect to affiliated companies, and not taking into account other loan transactions, were reduced $420,000.

Mr. O'Brien: Mr. Carter, while there will you state what you mean by reduced? Do you
26400 mean that they were less than the previous year?

The Master: No, we have had that before.

Mr. O'Brien: All right, I will go into it, your Honor.

The Master: No, you won't go into it.

Mr. O'Brien: If he attempts to bring out new matter I will go into it.

The Master: But you won't go into it. On the cross-examination it was brought out on inquiry by Mr. Chambers, I think, or by you, that the loans had been readjusted and reduced to affiliated companies this year, so that they owed less than they did the year before.

Mr. Chambers: Let him say what they are reduced—from what to what.

The Witness: I think I ought to be permitted to state, your Honor, that we have adjusted other loans so that we received $1,800,000 more cash.

The Master: No. Just one minute. The cross-examination had reference to loans to affiliated companies and the inquiry was whether loans, new loans or further loans, had been made; and I am very sure it was Mr. O'Brien who asked, and the result of the testimony was, by the statement of the witness, that the loans had been 26402
reduced instead of increased, and there was a great deal of confusion as to just what was done. I brought out by questions myself that old loans would be taken up and new loans would be made.

Mr. O'Brien: Your Honor will recall that you prevented me from going into detail; you said you had enough.

The Master: I probably did. He has told us there is a reduction in this loan account to the affiliated companies. I will not take any more questions on that unless Mr. Chambers wants the witness to give the total of the previous year and the reduced amount. I will permit that.

Q. Mr. Carter, do you know what the rate of in- 26403
surance, fire insurance paid by the Consolidated Gas Company, is?

Mr. O'Brien: Same objection, your Honor, as not re-direct.

A. Yes.

The Master: I think so.

The Witness: It is twenty-five per cent less ten.

Mr. O'Brien: Exception.

Q. Do you know what is the fire insurance exchange rate on gas plants?

26404 Robert A. Carter, Re-direct.

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial.

The Master: I will allow it.

Mr. O'Brien: Exception.

A. It is forty less ten.

By the Master:

Q. On all gas plants?

A. On all gas plants.

Q. It makes no difference as to the location or as to the character of the plant?

Mr. O'Brien: As a matter of fact they will
26405 not insure against explosion, your Honor.

The Master: I am not talking about explosions at all.

Mr. O'Brien: That is what it would have to be. It would wind up in explosions, and it is practically valueless, useless or worthless.

By Mr. Ransom:

Q. Mr. Carter, have you produced here a copy of the insurance agreement to which reference has been made from time to time in this case? A. Yes, sir.

Q. With the names of the companies and so on, which have hitherto been read in evidence?

A. Yes, sir.

26406 Mr. Ransom: I offer the same in evidence.

The Master: I will take it unless counsel makes objection on the ground that it is not the original document or that its authenticity as a copy has not been proved. If that objection is made I will have to exclude it.

Mr. O'Brien: May we look through it?

Mr. Chambers: I object to that on the ground it is incompetent, irrelevant and immaterial, but not on the ground that it is not authenticated.

The Master: The objection of incompetency is the one that covers its authenticity.

Mr. Chambers: I waive that particular part of the competency of it.

The Master: Then I will receive it in evidence.

Mr. O'Brien: Same objection, your Honor, without requiring that the original be produced. We object to it on other grounds.

The Master: It will be received and marked.

Mr. O'Brien: It has various statments that get outside of the range of insurance.

Marked Complainant's Exhibit No. 408.

By Mr. O'Brien: 26408

Q. Mr. Carter, is this James Jordan an officer in one of these companies?

A. James Jordan?

Q. Yes. Who is that trustee named James Jordan?

A. He has died since. That is an old copy, I think.

Q. Was the Brooklyn Union Gas Company in this?

A. No; I think that he was president of the New Amsterdam Company at that time.

Q. He was? And at that time president of the Brooklyn Union Gas Company?

A. Yes.

By Mr. Ransom:

Q. Mr. Carter, Mr. O'Brien, in cross-examining you, regarding the insurance schedules referred to the inclusion of certain tenement property owned by the company. Can you state whether the insurance on that tenement property is included in the operating expenses of the gas business of the company? 26409

A. No, it is not, except in respect of one single building, that is the 99th Street tenement house, which is occupied by one of the employes of that station. That is included, but the insurance on the other tenement houses is not included in the operating expenses.

Q. And has not been so shown by Mr. Teele?

A. It has, yes.

Q. It has not been shown as part of operating expenses?

A. No, it is not included in Mr. Teele's operating expenses.

Q. Mr. Carter, have you made up a statement showing in terms of cents per thousand cubic feet of gas sold the cost of the investment in land, plant and equipment devoted to the production and sale of the gas sold by the Consolidated Gas Company?

A. I have.

Mr. O'Brien: Objected to as incompetent, ir-
26411 relevant and immaterial; not re-direct.

Q. Does this statement and the computations therein shown represent the claims of the company in that respect?

A. They do.

Mr. O'Brien: Same objection, your Honor.

Mr. Ransom: I offer it in evidence, purely as a statement of the company's claim and not as in itself evidence of anything except the claim of the company, and a computation for the convenience of the Master.

The Master: I will not allow it. I will take it, though. I will not take it in evidence, but I
26412 will receive it for my information.

Mr. Chambers: I object to it.

The Master: I will not take it.

Mr. Ransom: May I mark this paper for identification, being a tabulation of investment in land, plant and equipment, and interest thereon of the Consolidated and affiliated companies.

The Master: For what reason?

Mr. Ransom: So as to show what has been offered to the defendants.

Marked Complainants' Exhibit No. 409, for identification.

Q. Mr. Carter, you were asked by Mr. O'Brien on page 6851 of the mimeographed transcript of the record for December 16th, regarding the inclusion of some twenty-seven enumerated automobiles in the insurance schedule. Will you please state as to each of those machines the present use made of the same by the complainant company?

Mr. O'Brien: I object to that, your Honor. It is not re-direct.

The Master: Why isn't it re-direct?

Mr. O'Brien: On the further ground that the witness stated—

26414

The Master: Why isn't it re-direct?

Mr. O'Brien: On the further ground—wait until I finish that. On the further ground that the witness has here stated under oath, three minutes before that was brought out, that there were only four or five, and he did not think there were that many.

The Master: I think he said half a dozen. Why isn't it re-direct?

Mr. O'Brien: If you want to get right down to the literal end of it, your Honor, it is not re-direct for the reason that it was offered as showing the insurance, distribution of insurance; then later the Court said he would take it for all purposes.

26415

The Master: The witness was asked on cross-examination, and the matter was brought out, that there were twenty-nine passenger cars, so-called, included in the insurance item. Without explanation I have a right to assume that is a very large number of passenger cars, and you wanted me to draw that inference, did you not?

Mr. O'Brien: I expected you would draw such inferences as might be drawn.

The Master: I have that inference now; that is the feeling I have—that twenty-nine passenger cars is an unusual number, and without explanation, I think it is an improper number. Why isn't it proper on re-direct?

Mr. O'Brien: As I understand it, re-direct is this: He did not make the statement in the schedule; he has not been asked now to correct some statement that he himself made.

The Master: Re-direct is not to correct statements.

26417 Mr. O'Brien: He said himself that he thought they were being used for commercial purposes.

The Master: Re-direct is not for the purpose of correcting statements; it is for the purpose of making additional statements to correct false impressions or wrong impressions, or to create a different impression. Objection overruled.

Mr. O'Brien: Exception.

A. Packard limousine No. 10976, used for general office passenger car service; Cadillac touring car—

Mr. O'Brien: Just a minute now. What do you mean by general office passenger cars, Mr. Carter?

26418 The Master: Since when did you come in on re-cross now?

Mr. O'Brien: I will wait until the re-cross, then.

A. (Continuing.) Cadillac touring car No. 47713, general repair car; Cadillac touring car, no number, an error, no insurance being placed upon it.

Q. No such car?

A. No such car.

Q. Mr. O'Brien read ditto marks where there was not any car?

A. Cadillac touring car 47741, withdrawn from service; Maxwell runabout 12282, withdrawn from

service, formerly meter department car; Oldsmobile touring car 63264, general office passenger car; Cadillac touring car 61694, manufacturing department passenger car; Cadillac touring car 65080, general office passenger car; Baker electric runabout 212762, meter department service car; Cadillac limousine, or touring car 78453, general office passenger car, and a similar car No. 78683, also general office passenger car; Ford runabout 315802, meter department truck; Maxwell town car 7846, paymaster's car; Cadillac emergency, 99810, street department emergency service; Cadillac emergency A2755, street department 26420
emergency service; Maxwell touring car 23990, general office passenger service; Maxwell touring car 23801, street department service car; Packard limousine 78347, general office passenger car; Maxwell runabout 6203, street department service car; Cadillac touring car 63769, street department service car; Cadillac touring car 63409, withdrawn from service; Cadillac touring car 63949, ditto.

The Master: That is withdrawn from service?

The Witness: Yes, sir, withdrawn from service. Maxwell town car 70328, paymaster's car; Maxwell sedan 124903, gas appliance department 26421
service car; Detroit electric 6926, meter department truck; Indian motorcycle 76H235, formerly used by the street department, since sold; Cadillac emergency K59-426, street department emergency car.

By the Master:

Q. How many passenger cars do you use in the general office there?

A. Seven.

Q. What use does the general office make of these passenger cars?

A. Those cars are maintained as a kind of taxi service, your Honor, for the use of the executives and administrative officials, and the heads of the departments of the general office for whatsoever purpose they may be required.

Q. What purpose would they require those for?

A. They would be required for getting to branch offices, stations, plants, or to some point on the district for some specific purpose, investigating some important trouble or complaint, by the heads of the departments in connection with proposed special in-
26423 stallations, or for any of the purposes. Our business is not at Irving Place, your Honor, it is from the Battery to the Harlem River.

Q. We have subways on both sides of the island.

Mr. O'Brien: How about the opera?

A. Yes, but the essential question with us is time saving, and we believe that the time saved by the use of these cars pays for them a good many times over.

Mr. O'Brien: I object to the whole answer as being not responsive.

The Master: I am going to let it stand.

Mr. O'Brien: It is a matter of proof.

The Master: I can see the necessity for the
26424 various departments having their automobiles to get to diffierent places quickly, the engineering department for instance, a car for Mr. Woods to get around from place to place, and that sort of thing—if he uses one.

The Witness: He seldom uses a car—very seldom.

Mr. O'Brien. We will find out about that. This is not under your jurisdiction, Mr. Carter: it is Mr. Addicks' job.

The Witness: The cost of those General Office passenger cars represents over five per cent—

Mr. O'Brien: I object to this, your Honor.

By Mr. Ransom:

Q. Of the $146,000 Automobile Expenses, which has been testified to, what proportion relates to the General Office Passenger Service, so-called?

A. About five per cent.

Q. With the exception of the seven cars devoted to Executive Officers and Heads of General Office Departments and others at the General Office, what is the nature of the use made by the Complainant Company of its other cars?

Mr. O'Brien: Just a minute. I am going to object to this as incompetent, irrelevant and immaterial, the witness having claimed when on the stand the day before yesterday that this matter he knew little about, that it was under Mr. Addicks. That was shown, that he knew little about it, when he stated under oath there were four or five. 26426

Mr. Ransom: He did not say that.

Mr. O'Brien: I know what he said, and it is in the record.

Mr. Ransom: Evidently you do not.

The Master: Objection overruled.

Mr. O'Brien: Glossing it over—"I should imagine not more than four or five and used for commercial purposes." 26427

The Master: I think the witness has already answered as to what department uses it.

The Witness: They are used for general trucking and commercial purposes, being in connection with the operating departments.

Q. Meter and Street Departments?

A. Meter and Street Departments, yes, sir.

Mr. O'Brien: I will get a record of the joy rides, your Honor, that will complete this story.

Q. Mr. Carter, you were interrogated by Col. Hayward with respect to what would be done in the contingency of the condemnation and taking of the 14th Street and 42nd Street plants by the City. If there were any such taking of either or both of those plants would the company be under the necessity of providing substitute manufacturing facilities in Manhattan?

Mr. O'Brien: Objected to as incompetent, irrelevant and immaterial; the witness is not qualified as an engineering expert. This is a matter —it is a new matter, but not re-direct.

26429 Mr. Ransom: He knows how much gas he has got to have better than anybody else.

The Master: Mr. Woods has testified very fully as to that.

Mr. Ransom: Mr. Woods is an engineer.

Mr. O'Brien: We will have Mr. Woods back; you can have a crack at him then.

Mr. Ransom: I wish to show by Mr. Carter, as one of the executive officers of the company, that in the event of any discontinuance or condemnation or taking of the 14th Street or 42nd Street plants, it would be necessary, in order to supply the quantity of gas which this company

26430 has to supply, to provide substitute plants.

Mr. O'Brien: I object to your testimony.

Mr. Ransom: And that has to be done within the Borough of Manhattan, to make them an adequate guarantee of continued service.

The Master: I will not take it.

Mr. Ransom: Exception.

Q. Mr. Carter, you were interrogated by Mr. Chambers with reference to certain testimony which you gave in the prior suit, William L. Wilcox, *et al.*, vs. The Consolidated Gas Company of New York,

on direct-examination of Mr. Burr, with respect to the complaint in the proceedings brought by the Consolidated Gas Company to reduce the assessment of 1905, placed by the State Board of Tax Commissioners upon special franchises. At page 3084 of the Supreme Court record of the prior trial, were you asked this question and did you make this answer, after the paper had been marked for identification, by Mr. Burr:

"Q. In the 1905 complaint, City's Exhibit 64 for identification you say: 'The value of the complainant's special franchises in the City of New York 26432
does not exceed the sum of $4,261,156; the excess of the said over-valuation is therefore $26,238,844.' Will you explain, if you please, how you arrived at those figures?"

Then there is colloquy of counsel.

"A. I should not like to testify offhand as to how those figures were reached, without having some opportunity to consult whatever original data or memoranda there may be available in connection with this complaint. I think that the amount named is approximately the value of the tangible property—I will correct that—the valuation placed upon the tangible property in the report to the State Board, based 26433
upon the cost of reproduction, less depreciation for the purposes of taxation.

* * * * *

"Q. Well, have you any recollection as to how you arrived at that figure, Mr. Carter?

"A. No recollection as to those specific figures, Mr. Burr; some recollection as to the general theory upon which that amount was stated; as advised by counsel, that this property and all other property that the company might own for the purposes of taxation pos-

sessed a value such as they would bring if sold under ordinary circumstances, and my impression is and my recollection is that counsel advised us that if sold under ordinary circumstances, the franchises, however valuable they might be to the Consolidated Gas Company as a going concern, would have some such value as its plant would have if scrapped—practically none.

"Q. Did you arrive at it by taking the original amount fixed in 1884 as you have testified heretofore, for the complainant, $7,781,000, and allowing for depreciation from that amount—did you in other
26435 words, by allowing for depreciation on the original valuation fixed upon these franchises in 1884, arrive at the figure $4,261,156?

"A. I am not aware that that was done, Mr. Burr. I have no recollection that that method was pursued at all. In fact, I think I can testify very plainly that it was not."

Mr. Chambers: Right there is a question which I read right out of the complaint. Would you care to hear what it was?

(Continued reading from page 3086):

"Q. Have you any data in your custody or under your control showing the manner in which you ar-
26436 rived at this figure of $4,261,156?

"A. I am not aware whether I have or not, or whether that figure may have been reached by counsel, having before him whatever facts were available; and having arrived at the figure, why, I naturally would accept his conclusions in subscribing to that document.

"Q. But I understood you to say in your sworn verification that you yourself were entirely familiar with the valuation of the special franchises and that they are correct and full and so forth?

"A. As I have already stated, where advised by counsel that there is one valuation of property that is owned and operated by a going concern and there is another value of property which it would bring if sold under ordinary conditions and circumstances, and that it is the latter value that is generally supposed to be its value for the purposes of taxation.

"Q. Well, you say that you believe, you are not certain, but that you think you arrived at that figure, $4,261,156, as the result of consultation with counsel?

"A. Why, most decidedly, it was by consultation 26438
with counsel, because we—

"Q. I understood Mr. Mathewson to say he knew nothing about this matter and disavowed any connection with it a moment ago?

"A. Mr. Mathewson was never counsel for the company in any of these special franchise proceedings.

"Q. Then you refer to other counsel?

"A. Yes, sir, I refer to other counsel.

"Q. Can you give me the names of such counsel?

A. Yes, sir; Boardman, Platt and Soley were our counsel in these proceedings.

"Q. You have no independent recollection at this moment of how you arrived at that $4,000,000? 26439

"A. No, I have not, Mr. Burr.

"Q. Can you say positively that it was the result of consultation with counsel that that figure was fixed?

"A. Positively, yes.

"Q. Do you recall the particular time and place where the amount was agreed upon?

"A. Are you referring now to 1905?

"Q. I am referring now to 1905.

"A. Well, as I always have had interviews with

counsel in that case in the office of counsel, it could only have been there.

"Q. And what is your best recollection—that you suggested the amount or that they suggested the amount?

"A. Absolutely, that they suggested it.

"Q. They suggested it and you swore to it?

"A. That is the case."

Q. At page 3088 and 3089:

"Q. Now, in the complaint in the proceeding regarding the assessment of 1906, you say:

26441 'The said assessment of $31,900,000 largely exceeds the value of complainant's special franchises. The true value of complainant's franchises in the City of New York and the amount for which same would sell under ordinary circumstances does not exceed the sum of $14,000,000. The extent of the said over valuation is $17,900,000.'

"Upon what basis did you fix the sum for this year at $14,000,000?

"A. That was the amount of an assessment, I think the first assessment against the company's special franchises which had been confirmed by the Supreme Court of the United States for approximately that

26442 amount.

"Q. You think that the Supreme Court of the United States meanwhile, between the first complaint and the second complaint, between Exhibit 64 for identification and Exhibit 65 for identification, had fixed the sum of $14,000,000 as a proper tax on your special franchises, do you? A. Not exactly $14,000,000. $13,900,000, if my memory serves me.

"Q. Do you know or can you state offhand what was the amount of the special franchise for 1905 as fixed finally?

"A. To the best of my recollection it was $27,300,000."

Then at pages 3093 and 3094:

"Q. I call your attention to Schedule D in this case, page 402 of Exhibits, and the item which appears there upon that page of 'Contracts, rights and so forth, $7,781,000.' Was this $4,012,257 embraced as part of that $7,781,000, or was it in addition to that $7,781,000 as appears there in Schedule D?

"A. What is the figure you have in mind?

"Q. I have in mind the figure which you stated was the correct and true valuation of your rights in 26444
the streets for 1903, $4,012,257, and I had in mind also the 'contracts and rights' which appear in Schedule D, page 402, in this case, and stated at $7,781,000—

"A. And the question is what?

"Q. Was $4,012,257 embraced in that $7,781,000, or is the $4,012,257 in addition to the $7,781,000?

"A. I think it is independently entirely of the $7,000,000.

"Q. Independent?

"A. Yes, sir.

"Q. It is embraced in this $7,781,000 as appears in Schedule D just referred to?" 26445

Then there is some colloquy between counsel, and it goes on:

"The Witness: Do I understand that you want me to repeat what I have previously stated with respect to this item of assets?

"Q. You say that this $4,012,257 which you claimed was a correct value of the franchises in 1903 is in addition to this sum of $7,781,000 as it appears on Schedule D, that amount on Schedule D purport-

ing to be the amount of your franchises and rights? A. The amount that you named, $4,012,257 is entirely independent of the value placed upon the contracts, rights and other intangible property of the company.

"Q. Very good. Now, let me ask you how did you arrive at this figure $7,781,000 as the value of your rights?

"A. I never did arrive at it. It was the value at which those intangible assets were carried on the books of the company. I never arrived at it; I am
26447 simply giving the value as it appears on the books of the company.

"Q. You mean to say you have carried that figure continuously on your books since 1884?

"A. That is the case, yes, sir.

"Q. Without any variation whatever?

"A. None whatever.

"Q. And that arbitrary figure you have carried up to the present time on your books, is that right?

"A. Yes, sir."

Then, at page 3100:

"Q. Did you know that the charter of the City of New York provided that in the assessment of real es-
26448 tate an amount should be placed opposite the real estate at which it would in ordinary circumstances sell?

"A. Yes.

"Q. And not in its original cost?

"A. No, sir.

"Q. Nor its structural value?

"A. No, sir.

"Q. Nor its cost of reproduction?

"A. No, sir.

"Q. And did you know that under the franchise

tax act that these special franchises and also the mains and services were defined as real estate?

"A. They were so defined, yes, sir.

"By Mr. Burr:

"Q. Did you know that they were so defined?

"A. I know that they were, yes, sir.

"By Mr. Mathewson:

"Q. And were you so informed by counsel at that time?

"A. Yes, sir.

"Q. Was it your view that these franchise rights, if sold in ordinary circumstances and separate from 26450
the tangible property of the company would bring their actual value as to an operating company?

"A. Decidedly not. They might bring no value whatever; there might be no bidders for them whatever under those conditions, whereas, as an asset of a going concern they might have a very large value.

"Q. And is the same true of mains and services?

"A. Identically."

Mr. O'Brien: I might observe here, your Honor, that counsel is getting away from what might be considered re-direct examination.

The Master: I don't think so.

Mr. O'Brien: He is going into various sub- 26451
jects there not covered by the questions asked by Mr. Chambers, and when I started to examine the witness as to patent rights your Honor would not permit me to go into that. You recall the question I put to him as to what was included in that $7,781,000, and your Honor shut me off and would not allow the witness to go into it, and this examination here goes into it at length.

Q. Do you remember those questions and answers?

Mr. O'Brien: I object to it as incompetent, irrelevant and immaterial upon the grounds I have just stated to your Honor, that it is not re-direct, it goes into matters that were not touched upon in the references made by Mr. Chambers to the record of the prior proceeding, it covers various matters concerning which I was not allowed to interrogate the witness on cross-examination. As an illustration of that—

The Master: No, I don't want your illustration. Objection overruled.

26453 Mr. O'Brien: Exception.

The Master: Do you remember being asked those questions?

The Witness: I remember testifying, and I have no doubt the testimony read is correct.

Q. Do you know, Mr. Carter, the amount paid by the Consolidated Company to the New York Mutual Company for 1919 taxes included in the sum paid that company for gas purchased in 1919?

Mr. O'Brien: I object to that as incompetent, irrelevant and immaterial and not re-direct testimony.

The Master: Objection overruled.

26454 Mr. O'Brien: Exception.

A. Yes, sir, $51,002.35.

Q. What was the total amount of taxes, if you know, paid by the Consolidated Gas Company in 1918, including the taxes paid by itself directly, those paid by it through the Astoria Company, and those paid by it through the Mutual Company?

Mr. O'Brien: I object to that, it is not re-direct.

The Master: Objection sustained.

Mr. Ransom: Exception. I do not think your Honor can get from the viewpoint from which you approach this case, as to the cost of making gas under present conditions and distributing it, the cost of distributing eighteen or nineteen billion cubic feet of gas, if you take the taxes merely paid by the Consolidated Company upon the plant with which it produced a part of the eighteen billion cubic feet, and divide the amount of taxes paid by the Consolidated Company by the total quantity of gas sold by the Consolidated Company. That does not give an accurate and 26456
complete picture.

The Master: The trouble with the case is this: You have not attempted to prove up as an independent item the cost of manufacturing in the Astoria Company by the other companies. You have not attempted to go into the proof of their invested capital in the same form that you have as to the Consolidated. The whole theory of your case is that you paid them a reasonable price for the gas furnished, and it is on that theory that I am excluding this question. I will have to work out this case on my own theory from the best evidence I can find in the case. 26457

Mr. Ransom: I am offering to show that the total taxes paid to the public authorities upon the property used in making and distributing this total quantity of gas was so much.

The Master: I will not take it. If I took that I would have to go into every other element to find out what was their pay roll, and everything else involved in the making of gas. I would have to take up each plant and find what it cost to make gas.

Mr. Ransom: Exception.

Mr. Ransom: I would like to make my offer of that Astoria resolution.

The Master: Make your offer.

By Mr. Ransom:

Q. Mr. Carter, have you produced here a copy of a resolution and order of the Public Service Commission on May 4, 1914, in Case 1717, to which I have previously referred this morning, relating to the order consenting to the issuance of $14,500,000 of bonds and capital stock of the Astoria Company?

26459 Mr. O'Brien: Same objection.

A. I have.

Mr. Ransom: I offer it in evidence.

The Master: Objection sustained.

Mr. Ransom: Mark it for identification.

The Master: Yes.

Paper marked Complainant's Exhibit 410, for identification.

Mr. Ransom: I also offer from the official publication of the Commission, Volume V of the Public Service Commission Reports, First District, page 124, the Opinion of Williams, Commissioner, and on page 126, the Opinion of McCall, Chairman, at the time of this order.

26460

Mr. O'Brien: Same objection.

The Master: Same ruling.

Mr. Ransom: I ask to have it marked for identification, or considered as marked for identification.

The Master: Considered as marked.

Considered marked Complainant's Exhibit 411, for identification.

RE-CROSS EXAMINATION BY MR. CHAMBERS:

Mr. Chambers: I now offer in evidence, while Mr. Carter is on the stand, complaint of the Consolidated Gas Company in the Matter of the Assessment for Taxation of Special Franchise of the Consolidated Gas Company of New York, which he has already identified, verified March 20, 1905, sworn to before Frederick N. Gilbert, Notary Public, Kings County.

The Master: It appears on what page of the United States Supreme Court record?

Mr. Chambers: It appears on page 6691 to 6696, inclusive. 26462

The Master: Of the Supreme Court record?

Mr. Chambers: Of the record in the Consolidated Gas Company in the Supreme Court.

Mr. Ransom: It being the document referred to in the questions asked by Mr. Chambers and by myself as City's Exhibit 64 on the prior trial?

The Master: Yes.

Mr. Ransom: I object to it as incompetent, irrelevant and immaterial. I do not raise the question that the copy which is here produced from the record in the prior suit is not the original. 26463

The Master: I will receive it.

Mr. Ransom: Exception.

Considered marked Defendants' Exhibit AA41.

Q. Mr. Carter, do you remember what the loans amounted to of the Consolidated Gas Company to other companies, and what was it reduced to? Can you give me the amount for 1919?

A. A loan recalled from an affiliated company, namely, the Astoria Light, Heat & Power Company,

during the year, amounted to $1,500,000; the loans made during the year, four in number, aggregated $1,080,000. Do you want the total of them?

Q. No. What were your loans in January, 1919? A. I have only the changes that were made during the year. I haven't any memorandum of the total loans outstanding.

Q. And what they were reduced to?

A. No, I haven't that; I have only the changes made during the year.

Q. Well, what loans were reduced?

26465 A. The loan of the Astoria Company as I have stated, was reduced a million and a half; the loans made, do you want, in total?

Q. Yes.

A. New York & Queens Gas Company $205,000; Westchester Lighting Company $275,000; New York & Queens Electric Light & Power Company $500,000; Central Union Gas Company $100,000; making a total of $1,080,000, and establishing as the excess of loans recalled over loans made of $420,000. Do you want the matter of other loans?

Q. Yes, have you got that?

A. Loan recall from National City Company

26466 $1,500,000; loan negotiated from the National City Bank $1,000,000, making a total of $2,500,000, less loan repaid to the National City Bank of $700,000, leaving a balance of $1,800,000 as the net resources from that source; and the total resources by reason of changes in the loans of $2,220,000 for the year.

Q. Those, I take it, are all six per cent loans, are they, or are they less?

A. The loans we make to the affiliated companies are at the rate of six per cent.

Q. How about the National City Bank?

A. I am not sure about that rate, but I think it is

five and one-half per cent. It may be a lower figure than that, but I won't be sure.

Q. It may be even lower than five and one-half?

A. I do not think it is. I think it is five and one-half per cent. Possibly it is, but I think it is five and one-half per cent. I would be glad to give you that in a memorandum, and your people could easily see the record on that.

Q. It is on the books?

A. It is on the books, yes, sir.

Mr. Chambers: Now, Mr. Ransom read from this record in the case of the Consolidated Gas 26468
Company vs. Mayor or Wilcox, and I want to read some more of those questions and ask the witness if he made the answers.

Mr. Ransom: I will consent that any part of it may be regarded as the questions put to him and the answers made by him.

The Master: You may read into the record the following questions and answers which appear in the Supreme Court record other than those already read in.

Mr. Ransom: This is subject to any objection I may have to their materiality and relevancy and competency. 26469

The Master: Yes.

Mr. Chambers: It may save time to read them over and just put it all in, say, at tomorrow's session.

Mr. Ransom: Yes. I say you may read, without the witness being present, or without the witness being interrogated you may read any question or answer of Mr. Carter's testimony on the prior trial subject to my objection, if I have any, to its materiality, competency and relevancy.

The Master: In other words, Mr. Ransom concedes upon the record that the Supreme Court record that you have in your hand correctly reports questions and answers put to and made by this witness on a prior trial.

Mr. Chambers: And the questions were put and he made those answers?

The Master: Yes. So if you will take up the questions and answers you want to read, if they are proper at this time Mr. Ransom won't object to them; if he thinks they are improper,
26471 he will object, and I will rule on it.

Q. Mr. Carter, where did you get these National Coal & Coke figures from on Exhibit 407? I mean who made those up?

A. They were made up in the office of the coke company.

Q. I mean who made them and handed them to you?

A. They did.

Q. You don't know of your own knowledge whether these are correct, do you?

A. Well, I have been connected with the coke company since it was organized, and I have been familiar
26472 with its transactions. If it was in any way substantially incorrect, I think I would discover it from looking it over and examining it.

The Master: You know, for instance, the capital stock during all these years, was $50,000?

The Witness: Yes, sir.

The Master: You know the salaries of officers paid?

The Witness: I do know that, yes, sir.

The Master: The only question there might be any question about would be the dividends paid from year to year.

The Witness: Well, I have always been present when they have been declared, and I know we have never declared in excess of ten, and we have paid five; I do not think ever in excess of ten per cent.

The Master: There is one here of $17,500 in 1903.

The Witness: Well, that probably is three years dividends, covering a period of two or three years operations. That is true. I mean per annum.

That was a big dividend on $50,000 capital? 26474

A. Yes.

Q. Was that an extra?

A. No, it just covered a period during which dividends had not been paid.

Q. Did these include all of the dividends including extras?

A. There were no extras, no other dividends than those.

Q. Now, I see the salaries here. Are these the salaries of just the officers?

A. Yes.

Q. You don't include salaries of other employees?

A. No. You mean men who sell and drive and 26475 transact the business?

Q. What officers did you include?

A. All of the officers.

The Master: What are they?

The Witness: There is the president, who draws no salary.

Q. Who is that?

A. Mr. George W. Doane.

Q. Is he connected with your company?

A. He is president also of the New Amsterdam Gas Company.

Q. Who else?

A. The treasurer of the company, Mr. Whiteley, I think, acts as treasurer of the company, and he doesn't draw any salary.

Q. He is with your company?

A. Yes.

Q. What position does he hold in your company?

A. Assistant treasurer.

Q. He gets his salary from the Consolidated Gas Company?

The Master: Who gets the $950 a year now?

26477 Mr. Chambers: $950 a year now?

The Master: I said, who does get it now?

The Witness: I think the secretary gets it.

Q. Who is he?

A. Mr. Lambrecht.

Q. Is he connected with your company?

A. He is the auditor of our company.

Q. Take this other man, Whiteley, was it, you named?

A. Yes.

Q. He is the assistant treasurer?

A. Assistant treasurer of the Consolidated Company.

26478 Q. And the treasurer of the Coke Company?

A. That is my impression. I would not be sure about that.

Q. He doesn't get any salary from the Coke Company?

A. No.

Q. All he gets is his salary from the Consolidated Gas Company?

A. Yes.

Q. Now, that Secretary that you have just named, does he draw the whole $950?

A. I think not. I think he draws probably five or six hundred dollars of it, and then there is something paid to somebody for keeping the books. The keeping of the accounts is a very simple matter, the transactions are not numerous.

Q. He gets most of his salary—

A. That is their financial transactions are not numerous. Of course their coke transactions are substantially voluminous.

Q. He gets his salary all from the Consolidated?

A. No. So far as actual work as president, Mr. Doane of the New Amsterdam Company, probably 26480
gives some of his time and attention to it, but it is not necessary to do a great deal, because the work of selling and carting coke does not necessarily involve his personal supervision.

Q. Who else is included in the—

A. So far as the treasurer is concerned, he would sign what checks, monthly checks, were drawn in payment for coke received from Astoria, and that would be about all. Fifteen to twenty minutes' work once a month, I believe, would be all that he would have to do.

Q. Are there any other persons that are working for the Consolidated that are officers of this com- 26481
pany?

A. I am a director of it.

Q. Any others?

A. Who are directors?

Q. Or officers?

A. No, I do not think there is any one else officially connected with the company.

Q. Do your engineers, the engineering staff of the Consolidated, give some time to this company?

A. No, it is a selling company, and their atten-

tion is given to the coke as it is produced or transported.

The Master: Your company owns all the stock of the National Coal & Coke Company?

The Witness: We own all the stock.

The Master: So that the profit that is earned by them goes into your revenue?

The Witness: Yes.

The Master: And reflected in your books as part of the revenue?

The Witness: It is.

26483 Q. Some of the time, though, of these officers you have named of the Consolidated, they do give some of their time to this company?

A. It would be so infinitestimal that it would not be worth talking about. It would—you could not express it in hours, because it is not hours, it is minutes in the course of a month that any official of the Consolidated Company devotes to the affairs of the National Coal & Coke Company.

Q. What do you do with these dividends that come in from the National Coal & Coke Company? What does the Consolidated do with it?

A. Credits them to an income account.

26484 Q. You do not credit them on the gas production or distributor in any way?

A. No.

Q. Now, take the dividend of the Consolidated which you said was 6.26 average, was that from the very beginning?

A. That is from the beginning.

Q. Down to the present time?

A. Yes, sir.

Q. That is the average per year?

A. That is the average rate.

Q. Have you paid any extras?

A. Never.

Q. In addition to that?

A. Never, no, sir.

Q. That is all the dividends that have been paid?

A. Absolutely all.

Q. Have you paid any stock dividends, anything that might be—

A. No, never.

Q. And have you divided up any stock in addition to that?

A. No, never.

Q. That includes everything that the stockholders have had by way of stock dividends or dividends or 26486
melons, you might say, does it?

A. All the dividends that have been paid are included in that statement.

Q. What is this very large deficit here in 1917, the National Coal & Coke Company, $25,000?

A. Well, that resulted from a practical suspension of the sale of coke. We were conserving it because of the difficulty of obtaining coal, and the company had, of course, to maintain its organization and maintain its transportation equipment, its horses and carts and auto trucks, and that sort of thing, and it was practically getting no revenue whatever from the sale of coke.

Q. You mean the Consolidated and the Astoria 26487
did not let them have much coke to sell, or any coke to sell?

A. That is the case.

Q. Other years you supplied them coke to sell?

A. Exactly, but there was a shortage in coal at that time, and difficulty in obtaining it.

Q. So you used some of the coke?

A. We conserved the coke for use in the water gas production.

Q. Well, you did sell some coke to other companies, if you remember, in 1917?

A. I think quite likely.

Q. To outside companies, like the Seaboard, for instance?

A. No. Sold to the Seaboard?

Q. Yes.

A. No.

Q. No?

A. No.

Q. Did you sell all your coke to the National
26489 Coal & Coke Company? I mean all you had?

A. All of it.

Q. You buy coke from the Seaboard?

A. We have bought coke from the Seaboard?

Q. From time to time during these years?

A. Well, I should say not more than two or three years ago. In fact, they have only been operating there for two or three years.

Q. In 1918 you must have let the National Coal & Coke Company have coke to sell, because you show a surplus here?

A. Yes, some.

Q. Did the other companies let them have the coke,
26490 too, to sell?

A. No.

Q. Your allied companies?

A. The only other company producing coke was the Central Union Company, and it handles its own coke business in the Bronx territory.

Q. So all the coke that the National Coal & Coke Company have to sell comes from the Consolidated or the Astoria?

A. From the Astoria Company; very little from the Consolidated Company.

Mr. Chambers: That is all I have, except reading that testimony.

RE-CROSS EXAMINATION BY MR. O'BRIEN:

Mr. O'Brien: Did Mr. Ransom's stipulation in regard to the testimony in the old case extend also to the reading of the testimony and cross-examination of Mr. Simpson?

Mr. Ransom: Simpson's testimony is all in.

Mr. O'Brien: You did not put in all of the testimony.

Mr. Ransom: I surely did.

Mr. O'Brien: You did not put in the cross-examination of Mr. Simpson.

26492

Mr. Ransom: I most assuredly did.

Mr. O'Brien: All of the cross-examination?

Mr. Ransom: Yes. All of the testimony of both Mr. Simpson and on this matter of—

Mr. O'Brien: I thought you left out passages here and there.

Mr. Ransom: I left out two or three on the first day under the Master's ruling that I did not need, as he thought, to read it all, but I concluded that under the authorities I was under the necessity of reading all or none, and therefore I on the second day read it all.

The Master: If you find there is any missing, you can read it in.

26493

Mr. O'Brien: Well, it only bears out what I thought earlier in the day, and what I expressed here, your Honor, that Mr. Carter was being questioned to controvert the testimony of Mr. Simpson.

Mr. Ransom: Mr. Simpson confirms Mr. Carter.

Q. Mr. Carter, what particular employee handed you these figures set forth in Exhibit 407?

A. They were prepared under my direction, by an

assistant of Mr. Lambrecht, who was the secretary of the Coke Company, and who went over them before they came to me.

The Master: Who handed them to you?

The Witness: Schoenfish.

Q. Who is he?

A. Schoenfish.

Q. He is still with the company?

A. He is.

Q. He is employed by the Consolidated Company?

A. He is an employee of the Consolidated Gas

26495 Company.

Q. Is he also a bookkeeper for the National Coal & Coke Company?

A. He is not.

Q. Who is the chief bookkeeper of the National Coal & Coke Company?

A. I think Mr. Lambrecht keeps the accounts of the company as secretary.

Q. He is an auditor of the Consolidated Gas Company?

A. Yes.

Q. They are the same bookkeepers who work for the complainant company, work for the National Coal

26496 & Coke Company and run their books?

A. Their bookkeeping is an insignificant matter.

Q. I did not ask you that.

A. Requires but very little of Mr. Lambrecht's time.

Q. I did not ask you that.

A. Well—

Q. (Interrupting.) Are they the same bookkeepers? Say yes or no, won't you?

Mr. Ransom: He has not said there are any bookkeepers.

Q. I did not ask you how much time he spent on them.

A. I do not think that anybody touches the books of the National Coal & Coke Company except Mr. Lambrecht, now that I think of it.

Q. Have they other employees, men in their employ, who take care of the books, and whose wages are paid only out of the funds of the National Coal & Coke Company?

A. The amount paid by the National Coal & Coke Company—

Q. (Interrupting.) I did not ask you that.

A. (Continuing.) For its bookkeeping, is full compensation for that work. 26498

The Master: That is not the point. Have they bookkeepers other than Mr. Lambrecht?

The Witness: No, I think not, your Honor. I would say no, that Lambrecht is the only bookkeeper they have. And likewise the only one they need.

Q. Are all of the employees taking care of the commercial side of the National Coal & Coke Company also employees of the Consolidated Gas Company?

A. They are not.

Q. What employees in the Commercial Branch of the National Coal & Coke Company are not employed by the Consolidated Gas Company? 26499

A. I would not undertake to name the employees, for I am not familiar with them. I will state generally that none of the employees connected with the Commercial Branch of the National Coal & Coke business of selling and delivering coke are in anyway connected with any other company.

Q. Do you know how many there are?

A. No, I do not.

Q. Do you know what they are paid?

A. No.

Q. Who would know, Mr. Lambrecht?

A. Yes, he would know all about it.

Q. Who runs the business, in the shape of executive committee work, of the National Coal & Coke Company?

A. Executive committee? There isn't an executive committee. There is a board, and the company's affairs are under the supervision and direction of the president of the company, Mr. Doane.

Q. Who makes up this board?

A. The board consists of Mr. Bradley, Mr. Doane,
26501 Mr. Gawtry, Mr. Addicks, I am a member of it, and I do not at the moment recall any others.

Q. Well, they act then as an executive committee to run the company, do they?

The Master: They are the Board of Directors.

A. They are the Board of Directors, and meet once a month.

Q. The Board of Directors are a distinct body from the administrative board which you have just described?

A. It is not an administrative board. I have described the Board of Directors. There is no adminis-
26502 trative board, no executive committee, in the organization of the National Coal & Coke Company, except as the Board of Directors directs the company's affairs.

Q. And they meet once a month?

A. Meet once a month for that purpose.

Q. And do you attend those meetings?

A. I do.

Q. All of them, or occasionally?

A. I attend them as a rule.

Q. Practically all of the business is brought up before that board that has to do with important

matters in connection with the National Coal & Coke Company?

A. The president reports to the board the result of the company's operations.

Q. This board outlines the policy of the company?

A. I don't know what you mean by the policies of the company. It is a selling company. Its policy is to sell coke. It does not outline that policy every time it meets.

Q. I did not ask you when they did it, Mr. Carter. I asked you who outlined the policies of the company. Does this board do it? 26504

A. In what regard? I don't know what you mean. What kind of policy?

Q. Who determines how much coke they are to sell or how much money they are going to spend in exploiting that business?

A. Which question do you want me to answer, both of them?

Q. Both of them, yes, Mr. Carter?

A. Nobody can determine the amount of coke they are going to sell. Their market determines the amount of coke they are going to sell. They sell all they can get, and all they can get people to buy.

Q. Who takes care of the same business of the National Coal & Coke Company that the executive committee does of the complainant company, the Board of Directors? 26505

Mr. Ransom: I object to that as fully covered, and the question doesn't mean anything.

The Master: I will allow it.

Mr. Ransom: Exception.

A. It has no such affairs requiring the attention of a board that the Consolidated Gas Company has.

Q. Is Mr. Doane given ample authority to regulate the affairs of the company, or does the Board of Di-

rectors take up this work and run the business of the company?

A. It sells coke. The Board of Directors does not have to keep directing it to sell coke.

Q. I am asking you now, who is the executive committee of the company? Does the Board of Directors do that, or does Mr. Doane?

A. Do what?

Q. The business of the company?

A. The business of the company is to sell coke.

Q. The executive business of the company, who
26507 regulates it?

A. It does not require regulation.

Q. You mean it runs itself?

A. It practically runs itself as a selling organization.

Q. It just automatically runs along? A. It sells coke when it can get it to sell and can find customers.

Q. You don't seem to be very well acquainted with its business, Mr. Carter?

Mr. Ransom: I object to the comment of counsel. That is not a question.

A. What do you want to know about it that I
26508 haven't told you?

Q. You didn't know who was the bookkeeper a minute ago until they told you from the jury box here.

The Master: That is argumentative.

Q. Can you say how much money was spent in the year 1918 for promotion of business?

A. By the coke company?

Q. Yes, sir.

A. No.

Q. Can you say how much money was spent for advertising?

A. I should say practically none.

Q. Can you say how much money was spent by the coke company for canvassing and soliciting business?

A. I should say practically none.

Q. Can you say what the commercial expenses of the company were?

A. No, not without the books before me.

Q. Does the Board of Directors of which you are a member fix the price at which the company sells its coke, or is that a matter left to Mr. Doane?

A. I think at the present time that a committee, a subcommittee of the board determines the price at 26510
which coke shall be sold.

Q. And who is that committee?

A. It consists of the president, Mr. Doane, and Mr. Gawtry.

Q. And who fixed the price in 1918?

A. That committee.

Q. And in 1917?

A. I will not be sure whether that committee was delegated with that authority in 1917 or 1918. It has been a comparatively recent matter because of the unsettled conditions, and the ever changing status of the coke market and the supply of coke, something that could not be regulated by the board and 26511
had to be delegated to somebody who could take it up at a moment's notice and dispose of it quickly.

The Master: Prior to the appointment of the committee who handled that.

The Witness: The Board always passed upon the price and acted upon the recommendation of the president.

Q. Has the executive committee of the complainant company taken action with respect to the affairs of the National Coal & Coke Company at any of its meetings since 1906?

A. I think not.

Q. Is your memory with regard to the minutes of the executive committee clear enough for you to give us a very definite statement with rgard to that matter?

A. I have said I think not.

Q. When did you read the minutes last?

A. What minutes?

Q. Of the complainant company's executive committee?

A. I read them to the Board of Trustees at the last meeting of the board.

26513 Q. I mean the minutes of other years. Have you been over them since the trial of this case began?

A. No.

Q. Did you prepare the excerpts from the executive committee's minutes which were turned over to the defendants, as to coal and oil contracts?

A. No.

Q. Did you give any directions with regard to their preparation?

A. None.

Q. Have you seen them?

A. I have.

Q. And they are correct copies of the excerpts?

26514 A. I don't think that I compared them; in fact I am sure that I did not compare them.

Q. Would you say that they were, from your knowledge of them?

A. I would not testify about them at all; I had nothing to do with them.

Q. Have you ever made any recommendation to the National Coal & Coke Company's directors, or to its president, Mr. Doane, as to the exploiting of the coke business in New York City?

A. No.

Q. Has any officer of the complainant company ever made recommendations to the National Coal & Coke Company as to the development and extension of the coke business in New York City?

A. Oh, it has been discussed from time to time, but—

Q. By whom?

A. At the board meetings.

Q. The complainant company's board?

A. No, at the board meetings of the National Coal & Coke Company.

Q. Has any officer of the complainant company, so far as you know, or has any board of the complainant company ever made recommendations to the National Coal & Coke Company's officers and directors as to the extension of the coke business in New York City and its development? 26516

A. Only as members of the board of the National Coal and Coke Company. It also includes Mr. Cortelyou, whose name I omitted to give you before.

Q. Do you recall any of these men ever making any recommendation upon the subject of the development and the extension of the coke business in New York City at any time since 1906?

A. As members of the board of the Coke Company, the sale of coke, the advertising of it, the exploitation of it as fuel, and those subjects, have been discussed frequently, but not of very recent years, because there has been a policy on the part of the Astoria Company to conserve its coke for gas making purposes. 26517

Q. By recent years you mean 1916, 1917 and 1918?

A. Yes.

Q. And 1919?

A. Yes, sir, 1919.

Q. Would you go back further than 1916?

A. I don't think I would.

Q. Would you go back and include 1914 and 1915?

A. No, I don't think I would. I do not recall that there was any shortage of coal at any time, if a shortage of coal occurred for any reason we would just naturally conserve our coke, and the active exploitation of its coke business by the coke company would be suspended during that period.

Q. Are we to assume that it was practically suspended in the last five years, the active development
26519 of the business?

A. No, I would not say during the whole five years, but for three or four years I should say that it had not been active in the sale of coke.

Q. Prior to that time are you able to say how much money was spent, approximately yearly in the exploiting of the business?

A. I have known those figures, because they are read at the board meetings, but I haven't them in mind at the moment.

Q. Would you say with any nearer approximation how much was spent for advertising prior to 1914, how much for canvassing?

26520 A. A very small sum for advertising; I should think also a comparatively small sum for canvassing.

Q. Has there been at any time that you know of since 1906, an active investigation made by an engineer or other employee or officer of the National Coal & Coke Company, or of the Consolidated Gas Company, to extend the business or see how it might extend the use industrially and for domestic purposes of coke in the City of New York?

26521

Mr. Ransom: I object to that as immaterial. This company is not in the coke business. By-product coke is a very different proposition.

The Master: He may answer this question. I am rapidly getting to the point of telling Mr. O'Brien that I think that I have heard enough about this, but he can answer this question.

A. At the times when there has been plenty of coke to sell there has been, of course, no reasonable effort neglected to find a market for coke by canvassing and by advertising.

26522

Q. Are you able to say in concrete terms what that reasonable effort was, in the shape of money expended, employees sent out in canvassing and advertising?

The Master: The Master rules that the cross-examination on this point has gone over the ground sufficiently. Question not allowed.

Mr. O'Brien: Your Honor, on that point I think the subject ought to be exhausted. The purpose of the question is obvious, and I want something more than a general statement from the man that is running the business of that company.

26523

The Master: I won't take any more on that subject. Next question.

Mr. O'Brien: Exception. I propose to ask a number of questions at this time to bring out the lack of activity in the development of the business of the National Coal & Coke Company, all of whose stock is owned by the complainant company; the disinterestedness of all the men that are charged with the running of that company; the failure to advertise the business and develop it, and to cultivate among the people around the City of New York the use of coke

for its many purposes, the utter lack of any work to find a market for it, and the real purposes for which this selling company was organized and carried on by the complainant company.

The Master: What do you say was the real purpose?

Mr. O'Brien: Why, my idea of it is that it is simply used as another camouflage for carrying on the business and spending money and entering up charges in their books.

The Master: In other words, you say it is a
26525 useless appendix to the gas company?

Mr. O'Brien: I do say so.

The Master: That is what you want to bring out from this witness?

Mr. O'Brien: As it has been conducted—

The Master: My ruling stands.

Mr. O'Brien: Exception.

Q. Do you know how much is paid by the complainant company to the National Coal & Coke Company annually for cartage and for other work?

The Master: I will not take that either.

Mr. O'Brien: But your Honor has taken this exhibit here that deals with a surplus.

26526 The Master: That does not make any difference.

Mr. O'Brien: You have opened the door here to all these questions that go into the relations between the National Coal & Coke Company and the complainant company. There are large amounts of money spent by the complainant company every month, payments made to the National Coal & Coke Company.

The Master: How do you know that?

Mr. O'Brien: I know that from some of the evidence in the case and from my own examination of some of the books.

The Master: The books are in evidence, are they not?

Mr. O'Brien: Not the books of this company.

The Master: No, the books of the gas company.

Mr. Ransom: And the cartage account was very fully gone into.

Mr. O'Brien: What?

The Master: The books of the gas company show that, do they not?

Mr. O'Brien: They do not show it amply. 26528

The Master: The question is not allowed.

Mr. O'Brien: We have before us now, your Honor, not the complainant company's entries: we have before us a statement made, which you have received as evidence, that this is what their surplus is. My contention is it has opened the door to an inquiry from this witness, who has some responsibilities as a director of this company, the National Coal & Coke Company, into the way they run the business, what they spend the money for, and the kind of work that they do.

The Master: The ruling stands 26529

Mr. O'Brien: I take an exception to your Honor's ruling. Then I will ask a few questions—

The Master: I will not let you ask any more questions. You are fully protected by the exceptions already on the record.

Mr. O'Brien: I propose to ask the witness now as to his knowledge of the methods of the company in its relations with the complainant company, the amount of work, and the way in which contracts are made as to the cartage, the

use of wagons, the trucking, the joint use of facilities and the other many details that enter into the relations between the two companies.

It serves the purpose of showing the way in which the accounts of this company are enlarged, where money is wasted in the relation with this particular company; the way in which this particular company is occupying the properties of the complainant company, and so on. It reaches out in a dozen different directions and has a direct bearing on the operating expenses of the

26531 complainant company.

The Master: My ruling stands.

Mr. O'Brien: Exception.

Q. Do you know of any coke having been sold at any time by the National Coal & Coke Company to the complainant?

The Master: That question comes squarely within the ruling just announced. It is not allowed.

Mr. O'Brien: Exception.

The Master: We do not want any more about the National Coal & Coke Company. Get to something else.

26532 Q. Mr. Carter, do you know what funds the money was taken from, of the complainant company, which was invested in the National Coal & Coke Company?

A. I do not think it was taken from any particular funds.

Q. Then it did include the profits of the gas business?

A. No, I would not state that.

Q. What else could it have come from, in 1901?

A. It might have come from other sources that the company had at that time.

Q. Can you state how much money was invested

by the complainant company since 1884 in the purchase of stock in any of the affiliated companies?

Mr. Ransom: Objected to as not cross-examination.

The Master: Objection sustained. We have been all over that.

Mr. O'Brien: Exception. Judge Ransom is objecting to that question?

Mr. Ransom: You correctly identify the source.

Q. What moneys have been invested by the complainant company in stock or bonds of the affiliated companies since 1906? 26534

The Master: Haven't I ruled against that?

Mr. O'Brien: You have, sir, since 1884.

The Master: Does not that include since 1896?

Mr. O'Brien: You may not make the same ruling.

The Master: Well, I do not want to hear any more questions on that.

Mr. O'Brien: I am going into the question of funds now.

The Master: You are not.

Mr. O'Brien: Working capital.

The Master: No, you are not. 26535

Mr. O'Brien: Working capital since 1906.

The Master: No, you have had all the working capital you are going to have.

Mr. O'Brien: The witness was asked in the re-direct as to moneys they had in the bank on December 31st of each year, since 1906. I therefore deem the question proper.

The Master: The question is ruled out. I do not want to hear any more about it.

Q. You have stated how much money was on hand December 31st, 1918, Mr. Carter, and each preceding

year. Will you state the total received in dividends by the complainant company during the year 1918?

Mr. Ransom: Objected to as immaterial.

The Master: Do you mean dividends and interest from other investments?

Mr. O'Brien: Yes.

The Master: I will let him state it.

A. I have not the figures here. I would not like to testify to that.

The Master: Do the books show?

The Witness: The books show it, that are
26537 in the hands of the defendants at this time.

Q. Do you mean to say, Mr. Carter, that you cannot give that figure?

A. I certainly would not attempt to give any figures of that kind from memory.

Q. You mean to say you could not approach it?

A. I would not say so.

Q. It was over $6,000,000, was it not?

A. You can testify on the subject if you want to.

Q. I am asking you now.

A. I will not say.

Q. I am asking you now was it or was it not over
26538 $6,000,000?

A. It might have been.

Q. Will you say it was not?

A. I will not.

Q. Will you state the total gross receipts from all sources of the complainant company during the year 1918?

Mr. Ransom: Objected to.

The Master: I will allow it. I will allow it as bearing upon where this cash came from.

A. No, I will not state the gross receipts from all sources in 1918.

Q. You do not carry that in your head?

A. I do not.

Q. I hope I am not going to lose my good opinion of you.

A. I do not care a rap whether you do or not.

Q. On your capacity for figures. It was more than $23,000,000, was it not, Mr. Carter?

Mr. Ransom: Objected to.

The Master: I will let Mr. Carter state, if he knows.

A. Why, it might have been—do you mean just cash going through our accounts, regardless of what 26540
sources they came from?

Q. Yes.

A. Whether it was loans, or loans repaid, or money borrowed, or receipts in the way of dividends and interest?

The Master: I will not allow the question. The books show.

Mr. O'Brien: Your Honor has changed your mind in the last minute?

The Master: Yes. The books show it; do not let us waste any time on it.

Mr. O'Brien: I think we have a right to find out how much we are to rely on any of his tes- 26541
timony by asking him a few simple questions that an officer ought to know.

The Master: I have made my ruling.

Mr. O'Brien: I note an exception.

Q. How much of the money, cash on hand in each of the years that you have referred to in your testimony this morning, your re-direct examination, was received from sources other than gas sales, sales and rental of appliances, and the sales of residuals of the complainant company?

Mr. Ransom: Objected to. The books are in evidence: the defendants have had access to them.

The Master: I will let the witness answer this.

A. I would not attempt to answer it as to the source of any—it would not be the source of any particular cash balance. It is absurd.

Mr. O'Brien: I hope your Honor is not going to permit the witness to characterize my statement here.

The Master: I would rather he did it than I. I would rather argue with him.

Mr. O'Brien: I note an objection on the rec-
26543 ord to the comment made by the witness. I think he has taken undue liberties here.

The Master: Concurred in by the Master.

Mr. O'Brien: You are encouraging him, are you?

The Master: I concur in the statement that it must be apparent to anybody who stops to think that it is perfectly ridiculous to ask any man where the money came from that was in the bank on December 31st of any one year. Next question.

Q. Did it in each of those years, on December 31st of each year, include returns or moneys received from
26544 investments in other than the gas business of the complainant company?

The Master: The question is not allowed.

Mr. O'Brien: I recall, your Honor, that was asked before, as to 1905 and 1918, but not as to these other years.

The Master: I will not take any more of it.

Mr. O'Brien: He has given you large amounts running up into millions for some years.

The Master: Yes, I know it.

Mr. O'Brien: And if it is not explained it may be misleading in the record.

The Master: No, it will not mislead anybody.

Mr. O'Brien: I except to your Honor's ruling.

The Master: This company gets its income from electric companies and other companies, from gas sources; it is perfectly hopeless to say that the resources at the end of the year are six million or one million, or that they come from one thing or another.

Mr. O'Brien: But he has primed himself on working capital.

The Master: No.

Mr. O'Brien: He has come in and given you some statement this morning from some memorandum handed to him by Mr. Ransom, as to the amount of money in the banks, and I insist it is a perfectly proper question to ask him whether that includes money from these other investments. 26546

The Master: You need not argue that with me, but some other place because I have made my ruling.

Mr. O'Brien: Exception.

Q. You gave a minute ago your statement as to the loans made to the National City Company and the National City Bank. Did you intend that we should gather from that that those were the only loans made by the complainant company outside of the loans to affiliated companies? 26547

A. I did not testify to any loans to the National City Company or to the National City Bank as being made during the year 1918. I testified to the cancellation of a loan made by the company to the National City Company and to the fact that money was borrowed from the National City Bank during the year, some of which was repaid.

Q. Were there any other loans made by the complainant in the year 1918 to anybody, or any corporation or partnership other than the affiliated companies?

A. I was not testifying as to the year 1918 at all; I was testifying to the year 1919.

Q. As to the year 1918, what is your answer?

A. I am not prepared to testify on the subject. I should have to refresh my memory by getting the figures from the books in order to do it. They are all a matter of record. Your people know all about it.

26549 Q. Could you say that there were some made without giving the amount?

Mr. Ransom: Objected to. It has been fully gone into in connection with the books.

A. Undoubtedly loans were made during the year 1918.

Q. To other than the affiliated companies?

A. I think not. There may have been loans renewed, that were made to other companies, to other than affiliated companies during 1918, but no new loans made.

Q. What were these other companies?

A. The National City Company is the only com-

26550 pany to which we have loaned money.

Q. Who are the officers of the National City Company, and the directors?

Mr. Ransom: Objected to as immaterial.

A. I don't know. I might know a director or two, but I do not feel sure about it.

Q. Mr. Vanderlip is a director, is he not?

A. Whether he is today or not I do not know. I believe he was. In fact I know he was at one time a director of the National City Company.

Q. Was he a director when the loan was made?

A. I should say that he probably was.

Q. Who are the two or three that you think you remember as directors of the National City Company?

A. I think Mr. Church is a director and I think Mr. Stillman is a director; I think Mr. Mitchell is a director. I would not like to be sure of anybody else. I never have seen a list of the directors.

Q. Do they handle any of the bonds of the complainant company?

A. What bonds?

Q. Any bonds.

A. Well, do you mean bonds that we own, not of 26552
our own issue?

Q. Both—both the bonds issued by the complainant company and any bonds that you own. Do they handle them?

A. When you say handle them, do you mean are any deposited with them or loaned to them?

Q. Cover the whole ground, Mr. Carter, and save the number of questions being asked.

Mr. Ransom: I object to the question as vague and meaningless. What does he mean by handle—deal in them, trade in them, buy them for other people's account, or what?

A. We have loaned Liberty Bonds to the National 26553
City Company.

Q. During the years 1918 and 1919?

A. During the years 1918 and 1919. That is, I do not think there has been anything more than a renewal during the year 1919. I do not think we have loaned them any additional amount.

Q. What security did you have for these loans?

A. None; the security of the company.

Q. What other bonds did you loan them, if any?

A. None.

Q. Did you loan them any stocks?

A. No.

26554 Robert A. Carter, Re-cross.

Q. At any time?

A. No.

Q. Is this Mr. Mitchell connected with the Consolidated Gas Company?

A. In no way.

Q. Mr. Stillman?

A. In no way.

Q. Do you know any of the other directors?

A. No.

The Master: We have had that before.

Q. Do you know whether any directors at any
26555 time of the National City Company were directors or officers of the Consolidated Gas Company?

A. Mr. Vanderlip is a director of the Consolidated Company. Mr. Sterling when he was alive was a member of the board of both companies. I do not recall any others who are on our board and on the board of the National City Company.

Q. Then you do not remember or do not know whether Mr. Cortelyou is a member of the board of the National City Company?

A. I know that he is not.

Q. Do you know who the president is of the National City Company?

26556 A. I think it is Mr. Mitchell.

Q. The treasurer?

A. I won't be sure.

Q. The chairman of the board?

A. No, I don't know. I do not keep track of the organization. It may change. It may have changed in the last week from what I know.

Q. How much stock in the complainant company is held by the National City Company?

A. I am not aware that any is.

Q. Would you say that there is none?

A. No, not without consulting the stock record.

Q. Who are the officers and the directors of the National City Bank?

Mr. Ransom: Objected to as immaterial. How can it possibly be material? What can it have to do with the issue in this case?

A. I cannot testify to that of my knowledge, and I do not want to testify from any other standpoint.

Q. Isn't that a matter generally known among financiers like yourself?

The Master: The question is not allowed.

A. Oh, yes, I know some—

The Master: The question is not allowed. 26558

Q. Who are the some you know, Mr. Carter?

Mr. Ransom: Objected to as immaterial.

The Master: The question is not allowed.

Mr. O'Brien: Your Honor does not see fit to permit me to find out the relations between these companies, to find out who they are, the officers in each and the directors in each?

The Master: The witness says he does not know; he would only be guessing at it.

Mr. O'Brien: I don't think so. He was about to tell us when you shut him off.

The Master: Next question.

Mr. O'Brien: Exception to your Honor's ruling. 26559

Q. Mr. Carter, do you know any man connected with the National City Bank, either as an officer or a director, who is an officer or a director or heavy stockholder in the complainant company?

Mr. Ransom: Objected to as fully covered.

The Master: I will allow that.

A. No.

Q. Are you able to state now how many persons or companies hold more than 2,000 shares of stock in the complainant company?

Mr. Ransom: Objected to as not re-cross examination.

The Master: The question is not allowed; it is not re-cross.

Mr. O'Brien: Exception.

Q. Have these loans to the National City Bank been approved by the Board of Directors of the complainant company?

A. They have.

Q. And the National City Company's loan?

A. It has been.

26561 Q. How much is now outstanding with the National City Company?

A. Loaned by the Consolidated?

Q. Yes.

A. Nothing.

Q. Are you today a borrower from the National City Bank?

A. We are.

Q. To what amount?

The Master: It is already given, is it not?

The Witness: Yes, I have already testified to it, your Honor.

The Master: It is not allowed.

26562 Q. Mr. Carter, where did you get your figures as to the amount of coal and water gas made at Astoria?

A. From the records in my files.

Q. Did you make your own analysis of the proportions?

A. Yes.

Q. Of coal and water gas made?

A. Yes.

Q. Your figures tally with the report made for the Public Service Commission?

A. No, because my figures cover a year ended Oc-

tober 31, 1919, and no report covering the year 1919 has been made to the Public Service Commission.

Q. By whom were these reports made to you, that were the basis of this testimony today?

A. The accounts of the Astoria Company are all under my jurisdiction and are in my files and in my department.

Q. Did you take the send-out and from the other data, the proportions, etc., from the manufacturing book of the Astoria Company?

A. No.

Q. They keep a manufacturing book, do they not? 26564

A. Yes.

Q. Similiar to the ones used at 99th Street and 21st Street?

A. Yes.

Q. It contains about the same data spread forth in columns?

A. Yes.

Q. Did you go over that to get up these figures?

A. No, no.

Q. To verify them?

A. No.

Q. Did anybody go over them?

A. Oh, yes.

Q. To verify these figures? 26565

A. Yes.

Q. To whom may we look, then, for some verification of these figures—Mr. Woods?

A. Yes, you can look to half a dozen people. You can have the original records if you wish them.

Q. Who gave you the information, Mr. Carter, as to the use of these automobiles that you have testified to today?

A. The superintendent of the department.

Q. Do you mean of the garage?

A. Of the garage.

Q. Who is he?

A. His name is Middlesworth.

Q. Has he been long in the employ of the company?

A. Yes, a number of years.

Q. Does he keep a record of each car each day?

A. Yes.

Q. Where it goes or where it is supposed to go to?

26567 A. No.

Q. When it goes out?

A. No.

Q. When it comes back?

A. He keeps a record of when it goes out and when it comes back.

Q. Is there any statement made in any permanent record kept by the company as to where a car is used, where it goes to, or the number of miles per day?

A. I think the number of miles—

Q. (Interposing.) And when it reports back?

A. The number of miles is a matter of record.

Q. Is there any record kept of any car, temporary

26568 or permanent, of the places to which these cars go, whether they are used in the daytime or the night?

A. You are referring to all the cars?

Q. Yes.

A. In the company's service?

Q. I am referring now particularly to what you call passenger cars.

A. Do you mean the taxi service?

Q. You call it taxi service; I call it sumptuous automobiles, unnecessary for a gas company?

A. You never saw them, did you?

Q. I have seen some of them. Is there such a record kept?

A. No.

Q. Why not?

A. Nobody wants it.

Q. They want to forget it, do they?

A. No. It would serve no useful purpose.

Q. It would not help the consumers?

A. The consumers certainly get the use of them.

Q. The joy rides?

The Master: Come, now.

Q. Mr. Carter, why don't you say, if you don't know, that this matter is not under your control, and you don't keep tabs on it? 26570

A. I stated it yesterday.

Q. Did you send for Mr. Middlesworth and discuss this matter with him?

A. Yes.

Q. What did you tell him to get up?

A. The facts as to the use of these cars, and the purposes particularly for which they were used.

The Master: So your testimony here is based on what he told you?

The Witness: It is.

The Master: I will entertain a motion to strike out the testimony. 26571

Mr. O'Brien: I make such a motion.

The Master: Granted.

Mr. Ransom: Exception.

Mr. O'Brien: That is all the testimony as to the automobile business?

The Master: Yes, as to the use to which these cars are put.

Mr. Ransom: As to what particular cars?

The Master: These twenty-nine cars on this insurance list. Mr. Carter has undertaken to say

what the particular purpose of each car is. He now says his statement is based upon what was given to him by Mr. Middlesworth. That is stricken out as hearsay.

Q. Mr. Carter, did you have any special official relation with this insurance agreement, dated September 15, 1902?

A. No.

Q. Have you had officially anything to do in connection with changes made in it, if any, since it was first adopted?

26573 A. I do not recall having had.

The Master: All you know about it is that that is the agreement that you work under?

The Witness: Exactly. I do not think it has been modified in any substantial respects at all.

Q. Was it collated for printing by you?

A. No.

Q. Who did that?

A. I presume it was done by counsel.

Q. Do you know whether the statement as to the death of Mr. Brady and Mr. Sterling and Mr. Harrison E. Gawtry are correct?

A. Are they correct as to the fact that those gentlemen are dead?

26574 Q. Yes, and the dates of their deaths?

A. I presume they are correct.

Q. Oh, I see here there is an attest of Mr. Brundage as to some of them.

Mr. Ransom: The complainant will admit their correctness.

Mr. O'Brien: As to everything spread forth here?

Mr. Ransom: With respect to the death of these men, and who became substitute and successor trustees?

Mr. O'Brien: Yes.

Mr. Ransom: Yes, we will admit, as this record shows, that certain of the original trustees died at the time therein set forth, and that their successors took their places as there set forth.

Mr. O'Brien: And that Mr. John A. Garver of Shearman & Sterling is one of the trustees?

Mr. Ransom: Anything that there stands.

The Master: I have taken that paper as it stands; it is all in evidence.

Is there anything else from Mr. Carter?

Mr. O'Brien: No. 26576

The Master: Have you anything, Major Clark?

Mr. Clark: Yes, sir; I have one or two questions.

Re-cross Examination by Mr. Clark:

Q. Mr. Carter, do you remember testifying in the last case in direct-examination as follows, in regard to the National Coal & Coke Company: "Q. Will you state what the National Coal & Coke Company is, what its business is, and the occasion for its incorporation? A. Prior to the organization of that company the carting of coke was done by contractors. The company believed that by doing its own carting 26577 or having it done by a company of its own organizing, that it could save something from the amount that was being paid the contractors for that service, and experience has confirmed that understanding that they could economize. Q. Do you know what was paid for this $50,000 of stock by the Consolidated Company? A. $50,000."

The Master: How is that in conflict with anything he has said?

Mr. Clark: I am just getting to that.

The Master: Only let me have what conflicts with what he has said here.

Q. "Q. Does this company act as a selling agent"—

The Master: Let me see what you want to ask that conflicts with what was said.

Q. "Q. Does it pay any return in the way of dividends back to the Consolidated Gas Company, do you know? A. It has paid as high as twenty-five per cent in dividends in one year. Q. And this method of handling coke has proved a measure of economy, has it not? A. It has, yes, sir."

26579 Mr. Ransom: That was perfectly true in 1905.

The Master: It paid more than twenty-five per cent in 1905.

Mr. Clark: 1905?

The Master: 1902.

Mr. Clark: Mr. Carter testified that was for three years.

The Master: No, he said they didn't declare anything for three years.

Q. Was that your intention to testify in the last case, that this had been earned in three years and not in one year?

A. I think it was, decidedly.

26580 The Master: He simply says they paid twenty-five per cent in one year.

Mr. Clark: The effect of the evidence is that they made twenty-five per cent in one year.

Mr. Ransom: After passing dividends for two years they paid $17,500 on a $50,000 capitalization.

Mr. Clark: That is the contention now.

The Master: Is there anything else?

Q. About this 1917 deficit, when did they stop selling coke to the Coke Company?

A. When did the Astoria Company stop selling coke to the Coke Company?

Q. Yes.

A. I don't think they ever stopped absolutely. For example, in the winter of 1917-'18 coke was supplied to several points where it was put in bags and sold to the public during the very severe spell of cold weather, when coal was not obtainable. A great many thousands of bags were sold.

Q. Was there very much change between the conditions of selling coke in 1917 and 1918?

A. Yes, I think that more was sold in 1917 than 26582
was sold in 1918.

Q. How do you account for the large deficit in 1917 as compared with the profit in 1918, if more was sold in 1917?

A. Well, I may be mistaken about that. It may be that more was sold in 1917.

By the Master:

Q. How could they lose so much money in any year?

A. That was in 1917—

Q. How could they lose that much money? They don't gamble on the price they pay?

A. No, but unless they have coke for sale and are 26583
able to make a profit to apply against their running expenses, the maintenance of a great many horses and of an organization, drivers, and other fixed expenses, rent, and things of that character, they can very easily lose $225,000.

Q. Have you analyzed this statement at all so you can tell us anything about it?

A. No, I have not.

By Mr. Clark:

Q. Can you bring a statement of that for that year, to show how the deficit was made?

26584 H. M. Brundage, Direct.

A. Yes, I will be glad to do so, or I can turn the books over to your people.

Mr. Ransom: That was done a long while ago.

The Witness: I think they know all about it.

Mr. Clark: We have not been making up statements of deficit of this Coke & Coal Company.

(Witness excused.)

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26585

H. M. Brundage, recalled.

Direct-examination by Mr. Ransom:

Q. On and after September 12, 1919, up to the present time have the books and accounts of the company been kept in the regular course of business?

A. They have.

Q. In the same manner and in the same routine to which you have hitherto testified?

A. Absolutely.

Q. And they have been kept in the various 1919 ledgers and journals and other books which have already been marked in evidence?

26586

A. Yes, sir.

Q. And were so marked on September 12, 1919?

A. Yes, sir; the same books.

Q. The testimony which you have hitherto given with respect to the mode of keeping the books and accounts during the portion of the year 1919 prior to September 12th, would apply to what has been done in the ordinary course since that time?

A. It would.

Mr. Ransom: I ask that there be considered in evidence in these various 1919 books which have

been received, the entries for the period from September, 12, 1919, to date.

The Master: They will be received subject to the same objections interposed to the books and to the entries in them as of September 12th.

Mr. Chambers: Exception.

Mr. O'Brien: Exception.

The Master: Is there anything else with Mr. Brundage?

Mr. Chambers: We have two or three questions that we would like to ask him when he is recalled. We will have them all written out. 26588

Mr. Ransom: The request that witnesses be recalled to the stand on behalf of the defendants was supposed to have been made yesterday, and was put off until today.

The Master: I haven't had time to get to it today. When will you be ready for Mr. Brundage?

Mr. Chambers: We will be ready to ask for all that we want to have recalled, on Tuesday.

The Master: When will you be ready?

Mr. Chambers: Tuesday—just a few minutes. And then Woods.

Mr. Ransom: I submit that, with respect to any requests for recalling of witnesses, as your Honor has previously directed, that such application should be made with the giving of some information and indication as to the purposes. 26589

The Master: Mr. Chambers has told me that he wants to—

Mr. Chambers: I can give that Tuesday, and he will be ready Wednesday. It will only take a few minutes.

Mr. Ransom: Why put it off that long?

Mr. Chambers: I think we ought to have that time, so as to know what we will ask about, and the Master should know what we will ask about.

Mr. O'Brien: We are going to take up this testimony to correct it, and a great many things, you know, that may not take much time, that will have to be readjusted, maybe, by the recalling of witnesses.

The Master: What do you want to ask Mr. Woods?

Mr. O'Brien: Mr. Woods' use of certain distributing systems. I haven't got the particular questions yet. Just a few questions. And possibly Teele. There may be a few questions of Teele, and there may not, but I will have them all written out Tuesday, and I will be glad to ask them Wednesday.

26591

The Master: What do you want now?

Mr. O'Brien: I will have a few questions to ask of Mr. Woods. I do not think we will take over half an hour more, your Honor.

The Master: What are they?

Mr. O'Brien: They will have to do with some matters in connection with the distribution.

The Master: You are not quite clear in your mind just what they are yet, are you?

26592

Mr. O'Brien: No, I am not. I am very frank to say, your Honor, that covering 200 pages of the record—

The Master: I am not going to recall Mr. Carter any more. He is here for anything you want.

Mr. O'Brien: Of course, it may be well for your Honor to indicate whether or not you are going to reverse your ruling of November 20th, with regard to these witnesses, when we are in—

The Master: I am not.

Mr. O'Brien: If the giving us the privilege of recalling the witnesses is to cure the defect in the record as of that date, of course, we want to know it.

The Master: It is not.

Mr. O'Brien: Because I will open up all the questions and lines of investigation that I was not allowed to go into.

The Master: It is not.

Mr. Chambers: It is just for new matter, isn't it, that we have not asked about before?

The Master: Yes. 26594

Mr. O'Brien: Then your Honor's ruling would stand as to all of those matters where we attempted to question the witness?

The Master: Absolutely. Anything that you covered or attempted to cover before, you need not waste time asking me now, because I will exclude it. If you have in checking up these figures found some items that you either cannot find the explanation for at all, or you do find it and you would like to have the explanation that you know there is for it on the record so you will have it, why, I am going to let you do it.

Mr. O'Brien: Your Honor, I want to have it clear on the record so that when the witnesses are recalled it does not appear that the questions which are asked represent the sum total of criticisms that we want to make. That is the great advantage of that. 26595

Mr. Chambers: No, it will be just something newly discovered.

Mr. O'Brien: Some one might get the impression that we have made an investigation into all the figures they have spread forth in their exhibits there, see, and such as are brought out are the only mistakes that are found.

The Master: I think Mr. Chambers understands the purpose of this permission to recall, and I do not think I will have any trouble.

Mr. Chambers: I suggest to-morrow that we proceed to correct the testimony.

The Master: Do you need me here?

Mr. Chambers: No, I do not think so. I think we can agree, and when we strike one that we cannot agree on, then we will set it aside and let you pass upon it. I suggest possibly we do that Monday, and Tuesday, and Wednesday call
26597 these witnesses back.

Discussion off the record.

Adjourned to Tuesday, December 23, 1919, at 9:30 A. M.

Last Complainant's Exhibit 411
Last Defendant's Exhibit AA-41

26598

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, etc., *et al.* 26599

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 23, 1919.

Met pursuant to adjournment.

PRESENT: MR. RANSOM, MR. VILAS and MR. GOETZ, of counsel for Complainant.
MR. CHAMBERS, of counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of counsel for Public Service Commission. 26600
MR. O'BRIEN, counsel for defendant Swann.

Mr. Chambers: The first matter which I want to bring up is the question of photographs. The other day we asked permission to photograph the plant, and Mr. Ransom said he would let us know. Have you reached a decision on that yet, Judge Ransom?

Mr. Ransom: I am willing, of course, to abide by what the Master directs in that respect. There has been some trick photography which has been used in gas cases by some defendants, and I have 26601 no desire to enter into a contest as to photography at this stage of the case. I do not believe that any real advantage would be gained by entering into that aspect of the case at this stage.

The Master: I will direct you to permit photographs to be taken by the defendants, and if you wish you can have your own photographer there.

Mr. Ransom: What I suggest is this: We object very much to allowing Mr. Little and Mr. Hine and Mr. Maltbie, who are continuously doing this sort of work in gas cases throughout the

26602

country—some of them calling themselves gas engineers—to take photographs and plates of this company's apparatus, buildings, and so on.

The Master: Photographic plates?

Mr. Ransom: Photographs and plates. The most I have ever known being done, where a defendant wanted to go into that sort of thing, was to have photographs taken under auspices which insured that the plates and the photographs would not come into the possession, or permanent possession, of these engineering firms, so-called.

26603 If your Honor feels that anything of this sort is going to be helpful in this case, I would suggest that a basis be worked out for it. We are willing, the company is willing, to take any photographs that the defendants want if your Honor directs that there be photographs, and take them at such times and places as the defendants desire, furnishing copies of them for use in this case, and do it on a cost basis. But we are not willing to let outside photographers come into our works, or to let this man Little and others have plates and photographs of our apparatus, buildings and equipment, for purposes of destroying the proof of property of others in other cases.

26604 If we are willing, in view of your Honor's direction, to have these photographs taken by the company's photographers from such places and of such buildings and apparatus as the defendants may designate, we ask that the plates and photographs remain in the possession of the company, with the exception that copies thereof be furnished for use in this case.

Mr. Chambers: On behalf of the defendants I say that we want to make our own photographs.

26605

Mr. Ransom: I can appreciate why the defendants want to make their own photographs.

The Master: Why?

Mr. O'Brien: I cannot see anything in Judge Ransom's suggestion except evasion.

Mr. Ransom: Frankly, here are men like Mr. Little, and Mr. Hine, and Mr. Bemis, and Mr. Adams, whose profession and business is the gas business, from the viewpoint of their presentation of the defendants' side of cases before public bodies throughout the country.. If we turn over to them and let them have photographs of this company's apparatus, this company's buildings, structures and equipment, so that those things go into their files for use by them in other cases, it is an injustice to this company, it is an injustice to other companies.

26606

The Master: How is it an injustice to this company?

Mr. Ransom: Because they have not any right to it.

The Master: How does it hurt the company?

Mr. Ransom: It hurts the company in the sense that these photographs are taken into other cases and made subjects of comparisons there, just as the photographs from other cases, I take it, will be brought into this case and made the subject of comparison here.

26607

The Master: How does that hurt this company?

Mr. Ransom: I think it does; I think it is an invasion of this company's rights.

The Master: I am going to permit the defendants to make photographs of such sections of the complainant's property as they desire, and if the complainant wants to protect itself from trick

26608

photography it will have to have its own photographers there.

Mr. Ransom: I will have to consult with the officers of the company as to whether they will consent to giving men of the type of Little and others the possession of photographs of this company's property. We have stood for a good deal from these people and are probably going to stand for more, but there is a limit even to what these men can do to a gas company that is caught in the position this company is.

The Master: I think they are entitled to photo-

26609 graphs.

Mr. Ransom: Judge Nichols did not allow any such thing in the Albany case.

Mr. O'Brien: In the Kings County case there was a large number of photographs, your Honor.

Mr. Chambers: He allowed photographs there.

Mr. Ransom: Yes, but the plates and photographs are to be delivered up and are not to be permitted to remain in the files of Mr. Malthie and Mr. Hine; isn't that correct?

Mr. Chambers: He directed that the plates be filed in the County Clerk's office, to which we consented. We consented to all that.

26610 Mr. Ransom: You could avoid that here.

Mr. O'Brien: You have not got any more rights than anybody else in a litigation where photographs are taken. Your statement is absolutely without point and shows a disposition which has been manifested since the beginning of the litigation, not to give anything unless it is forced out of you.

Mr. Chambers: All we ask is permission to go in there. I do not see how anybody can stop us from photographing any building.

26611

Mr. Ransom: You might photograph anything that is in the street, if that is what you want.

The Master: I do not really see any point about filing plates in the Clerk's office. I think there is a lot of unnecessary excitement about these photographs. If it is any point to you to have the plates filed with the Clerk, if Judge Nichols did that, I will follow Judge Nichols' rule. There is no need of fighting about that. When you talk about Mr. Maltbie and preventing him from using it in any other case, I do not see how you can stop him.

26612

Mr. Ransom: They have no right to. This is not a feeding ground for other cases.

The Master: What interest have you got in what is done in other cases?

Mr. Ransom: None.

The Master: I have trouble enough in this case without worrying about other cases.

Mr. O'Brien: The complainant put in about twenty-five photographs in the Kings County case, your Honor.

Mr. Chambers: Mr. Ransom's innuendo about the character of these men preparing the case is not correct.

26613

The Master: I will direct the complainant to permit the defendants to take such photographs of such sections of the plants as they desire. If you want to make as a condition that the plates be surrendered to the Clerk of the Court, I will do that.

Mr. Ransom: We certainly want them surrendered to the gas company.

Mr. Chambers: No, we do not want that. We want them surrendered to the clerk. If we need them, or if they are necessary, the plates will be

26614

there for use. That was Judge Nichols' idea, to have them there available.

Mr. Ransom: When you have the photographs for the purposes of this case, that ends it.

The Master: I will direct the complainant to permit the defendants' photographer to take such photographs of such portions of the plant as they desire, unless there is some secret formula or some secret process that you say you do not want to disclose—some secret patent, or something of that sort. If you say that is your position, I will not direct that you disclose it.

26615 Mr. Chambers: That is not what we want.

The Master: So far as the building shows cracks in it, I know perfectly well that I can take a photograph of a crack that will show the building is falling apart.

Mr. Ransom: Yes, they can take a photograph of the Park Row building falling over. That is what they will do with it.

The Master: I can tell very quickly whether a photograph has been taken to exaggerate a condition.

Mr. Ransom: Is it required that the plates be returned to the complainant?

26616 The Master: No, the plates will be filed with the Clerk.

Mr. Ransom: We except to your Honor's ruling.

Mr. Chambers: We would like to have Mr. Aldrich recalled for this purpose—

The Master: He is going to be here and you can ask him any questions when he is here, and I will rule on them.

Mr. Chambers: We want to find out from Mr. Aldrich, or somebody else, if they have any map or record showing the real estate which was

26617

vested in the Consolidated Gas Company at the time of the consolidation, and its cost—the real estate.

The Master: What do you mean by its cost?

Mr. Chambers: The different pieces of real property that were taken over from the other companies.

The Master: The appraisal of them?

Mr. Chambers: The book cost.

Mr. Ransom: That is not a cross-examination of Mr. Aldrich.

Mr. Chambers: The book cost of those pieces.

Mr. Ransom: The book cost is the stock. That 26618
is their case; we are not proving their case.

Mr. Chambers: What the old companies paid.

The Master: I will not allow that anyhow. My ruling is going to be that the cost of this company is the stock issued by it.

Mr. Chambers: We want to have them furnish us a map or record showing these pieces of real property. That is only fair.

The Master: Which were taken over?

Mr. Chambers: Yes.

The Master: At the time of consolidation?

Mr. Chambers: So that we can locate them.

The Master: At the time of consolidattion? 26619

Mr. Chambers: Right—that they started with.

The Master: The only question is whether it is cross-examination of Mr. Aldrich. He testified that at this time they were using certain plants for gas purposes.

Mr. Ransom: From 1906 down.

The Master: He subsequently came in and said what had been used from 1906 down. He never attempted to give any testimony as to what was used in 1884.

Mr. Ransom: Or anybody else.

26620

Mr. Chambers: They have given the lump sum of what they claim is the value of it.

Mr. Ransom: Of what?

Mr. Chambers: Of the property.

The Master: I understood that that was in the appraisal. The Rowland appraisal covers all that, does it not?

Mr. Chambers: The Rowland appraisal does not cover the information we want, which is an itemization of the pieces of property and their location.

The Master: I would not permit you to cross-
26621 examine Mr. Aldrich on that. I cannot direct them to give you it.

Mr. Chambers: Then suppose we call Mr. Carter later and ask him if he knows anything about it.

The Master: You can call Mr. Carter as a witness in your case.

Mr. Chambers: We understand that they have been working on the special assessments. We would like to know if Mr. Brundage can be called for cross-examination on that?

The Master: What special assessments?

Mr. Chambers: What property was subject to
26622 these special assessments?

The Master: What do you mean special assessments?

Mr. Chambers: Why, for sewers and things like that. We cannot identify the property upon which these special assessments were laid. They can.

Mr. Ransom: It is not part of our case at all.

The Master: I shall deny the request on the ground that the Tax Department records will show it.

26623

Mr. Chambers: We want to recall Mr. Woods and ask him about certain property, when it was used and the use that has been made of it.

Mr. Ransom: What property?

Mr. Chambers: I have not the list of it here just now. But about the holders.

The Master: I do not think Mr. Woods gave any testimony that is cross-examination of. That is the trouble with that.

Mr. O'Brien: He went into the manufacture of gas and the use of all of the paraphernalia of the company, your Honor. We have a right to test his ability out as an engineer of manufacture. They presented him as an expert on the hypothetical figure.

26624

The Master: You prepare a list of what you want give it to the gas company, and ask them for that information. If they do not give it to you I will let Mr Chambers call a witness of the gas company to get the information.

Mr. Chambers: We have asked them to state or show us the records, to show the gas going in and out of various holders. Your Honor stated they could not give that to us.

Mr. Ransom: They have had all the records we have on the subject.

26625

The Master: If Mr. Maltbie will prepare in writing what he wants and Mr. Chambers will put a request in writing to counsel for the complainant asking for that information, and the information is not given, I will permit counsel for the defendant to call one or more witnesses, officers of the gas company, in an effort to get the information as best they can, as part of their direct case.

Mr. Ransom: As their case?

26626

The Master: Yes. In other words, I am going to let them wherever they feel they need information or want to prove some facts, call the employees or officers of your company to prove the fact, having in mind at that day our adverse witnesses, and I will let them go pretty far in getting it. That is so with regard to other items. Is there anything further, Mr. Chambers?

Mr. Chambers: That is all.

The Master: Anything further, Major Clark?

Mr. Clark: No.

The Master: Anything you want, Mr.

26627 O'Brien?

Mr. O'Brien: Your Honor, with regard to further cross-examination of the witnesses, my position is this, that I am going to ask your Honor to make it a matter of record that no further questions will be asked along the lines that were shut off under the ruling of the Court.

The Master: I do not see how I can make my ruling any clearer. I won't permit questions on the lines I have ruled out. I have not changed my mind on that.

Mr. O'Brien: Now, as to these witnesses to be recalled, Mr. Chambers has requested Mr. Teele

26628 and Mr. Brundage and Mr. Aldrich.

The Master: No, he has not requested Mr. Teele.

Mr. O'Brien: Well, Mr. Brundage, Mr. Aldrich and Mr. Woods to be recalled—

The Master: No, he has not at all. He has not asked that anybody be recalled, and nobody is being recalled except Mr. Aldrich and Mr. Brunage, to make corrections in their testimony. Now, do you want anybody recalled for further cross? Mr. Chambers has not asked that anybody be recalled.

Mr. O'Brien: The points I have in mind perhaps would not necessitate bringing the witnesses here if they are not going to come anyway. There are some matters after we correct the testimony that I would like to have this matter held in reserve for; after we correct the testimony there may be some details that I am sure will take mighty little time, to ask any questions I may have to ask.

The Master: We will see about it.

Mr. O'Brien: There may be a few things I would want to clear up, a few questions about 26630
Woods' statement as to his experience—he is being called as an expert or consultant, or some one or two little details about his testimony, but I won't take up more than an hour's time at the most.

The Master: I probably won't let you recall him, in view of what you have said.

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HENRY M. BRUNDAGE recalled.

RE-DIRECT EXAMINATION BY MR. VILAS: 26631

Q. Mr. Brundage, in the proceedings for August 13, 1919, at page 1426 of the minutes, I call your attention to the answer comprising folio 4277 and part of 4278, and ask you if you have any corrections to make in your testimony at that point, and if so, what?

Mr. O'Brien: I will object to that, corrections in the testimony.

Mr. Vilas: Well, any changes?

The Master: Does the stenographer's minutes correctly state or report what you said?

The Witness: I believe that it does not.

The Master: In what respect?

The Witness: The testimony as reported says, referring to the routine by which payments are made on account of contract that "as the work progresses the field inspectors or engineers report to the engineer of construction as to the work accomplished, and they send those reports showing his knowledge of the conditions."

The Master: Yes.

The Witness: The statements that I made at that time was that "the field inspectors or engineers report to the engineer of construction as
26633 to the work accomplished, and they send those reports from their knowledge of the conditions"—eliminating the words "showing his knowledge," changing it to read "from their knowledge."

The Master: Anything else?

The Witness: Yes, there is another correction here I noted.

Q. Referring to folio 4278?

A. Yes. The last line as reported reads, referring to the routine in the accounting department: "pass through our accounts and transmitted to the engineer of construction, and he pays it." What I said was, "pass through our accounts and transmitted to the
26634 treasurer's department, and he pays it."

Mr. Chambers: We approved that.

The Master: Might it have been that you said it was transferred through the engineer of construction to the treasurer's department and he pays it?

The Witness: I could not have said that, your Honor, because it would not be true.

Mr. O'Brien: Doesn't it go through the engineer's department?

The Witness: Oh, it does before it comes to the accounting department; yes, sir.

(Witness excused.)

Mr. O'Brien: Your Honor, we will be engaged in correcting the minutes, making the corrections of the testimony during the week, and that, as I said before, will bring out some matters that I may want to clear up, and I assume you are holding it open until something impresses you—

The Master (interrupting): I will hold it open until next Tuesday. I have plenty of time between now and January 5th to cover everything. 26636

Mr. Chambers: Pursuant to stipulation made by Mr. Ransom the other day, when Mr. Carter was on the stand, I read from the gas and electric investigation made in 1905, known as the Stevens Joint Investigating Committee. I read from page 208 of the printed record of that report, as follows:

"Q. Before you get to that, as suggested, is that the value that was arrived at after consideration of the matter by others besides yourself?

"A. That is the case, Mr. Hughes.

"Q. With whom did you advise in making this determination of value? 26637

"A. The engineers of the company.

"Q. Who were they?

"A. Mr. Bradley and Mr. Woods.

"Q. And who else?

"A. The assistant secretary who has charge of the distributing system of the company.

"Q. Who was that?

"A. Mr. Simpson, Mr. C. C. Simpson.

"Q. Yes. Anybody else?

"A. I think if we were in doubt I would have con-

sulted with the president from time to time regarding the figures that went into the report.

"Q. You sought in this way to get from all persons connected with the company who had expert information as to the value of that property what would be a proper valuation thereof on that day?

"A. Yes, sir.

"Q. And that the amounts which are stated in this Schedule B that you have before you in that report for 1904, were those arrived at and stated?

"A. Yes, sir.

26639 "Q. And with the concurrent judgment of these various men, familiar with the facts?

"A. Yes, sir."

(Page 221):

"The Witness: It is impossible to state the cost of real estate, equipment, etc., for the following reasons: There are no records in the possession of the Consolidated Gas Company showing the cost to the constituent companies of the property which those companies transferred to the Consolidated Gas Company, which comprise the principal part of the property of the Consolidated Gas Company. Much of the property was purchased by the constituent companies more than fifty years ago, and the officers of the Consolidated Company are ignorant of the terms on which such purchases were made."

26640

(Page 223):

"Q. Then you mean to say that your plant was worth less on June 30, 1904, than a new plant produced on that date would have been worth?

"A. Yes, sir."

(Page 226):

"Q. And when did you determine to remove to Astoria?

"A. When we constructed.

"Q. How long ago?

"A. The construction? Do you mean did we first contemplate going?

"Q. Yes?

"A. Why, I should say it was ten or fifteen years ago.

"Q. Ten or fifteen years ago. When did you first make your definite arrangements for that purpose?

"A. Well, I don't think I could name a date when 26642
the definite arrangements were made."

Now, pursuant to the same stipulation, I read from the record in the case of the Consolidated Gas Company v. Mayer, page 3087:

"Q. The assessment fixed in 1905 was $30,500,000, was it not? That was the assessment which you sought to have reduced by this proceeding to which I have referred and in which this is the complaint, referring to City's Exhibit 64 for identification?

"A. My recollection is that that was, Mr. Burr, the tentative assessment.

"Q. Here it is right here (indicating).

"A. Well, of course, I assume that that is right, 26643
that that is the tentative assessment.

"Q. $30,500,000?

"A. Yes, sir.

"Q. And you claim that that was an overvaluation by $26,238,844?

"A. That is the amount stated in the complaint.

"Q. As being the overvaluation?

"A. As being the overvaluation."

(Page 3089):

"Q. In the complaint, Exhibit 64 for identification, you state: 'If the value of the tangible property in

the streets, $4,261,156 is deducted from the amount of the assessment, the assessment upon the intangible element of the special franchises alone is $8,599 for each cubic foot of space occupied by the mains and pipes of the complainant in the streets of said city.' Was that true at the time, or did you believe it to be true?

"A. Just a calculation. It must have been true. I did not make the figures myself, but I assume they were correctly made.

"Q. Well, your idea was, and the understanding at
26645 the time you swore to this paper was, that $4,261,156 represented the value of the tangible property in the streets?

"A. No. It was a valuation placed upon the tangible property in the streets assuming certain conditions in the laying of the mains and certain depreciation in value as indicated by the report to the State Board of Tax Commissioners.

"Q. And that is the idea you had in mind when you swore in paragraph first of this complaint, Exhibit 64 for identification: 'The value of the complainant's special franchises in the City of New York does not exceed $4,261,156.'

26646 "A. I assume that to be the case, especially if those figures agree."

(Page 3095):

"A. Assuming it to be correct I have no doubt the stated excess is as it was given in my statement. It was arrived at I presume in the same manner as in previous years and other years to which you have referred. The excess of the assessed value over the value of the tangible property is given in the special franchise tax report.

"Q. In other words, they had imposed a tax of $21,900,000 and you claimed that that was $17,820,160

in excess of the proper valuation. In other words, you claimed that the true value was $4,070,840?

"A. For the purposes of taxation, yes.

"Q. That was for the year 1904?

"A. That was for the year 1904.

"Q. The original assessment for that year was $22,000,000, and in the complaint filed with the State Board you claimed that was $18,129,160 in excess of the true value, or that the true value was $3,870,840?

"A. Well, you are reading from a document there. If it so appears in the original unquestionably that is the case. 26648

"Q. And you are not able now, as I understand it, to state why there are these variations from year to year in what you claim to be the true value?

"A. None other than I have given. I think that the figures given would be found each year in the report of the company to the State Board of Tax Commissioners."

(Page 3097):

"Q. Well, you have stated the proper valuation of your franchise rights for 1904 for instance at $4,070,840, again at $3,870,840, in 1905 at $4,012,257. I say in arriving at any of these totals did you take into consideration, or in arriving at that figure if you now recollect the fact, that any of the franchises upon which this valuation of $7,781,000 had been fixed in 1884 have since expired? 26649

"A. Oh, I am sure that nothing of that sort was considered."

Mr. Ransom: I would like to put on this record this stipulation waiving the signatures of the witnesses appearing before the Master.

The stipulation is as follows:

26650 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

| | |
|---|---|
| CONSOLIDATED GAS COMPANY, Complainant, against CHARLES D. NEWTON, as Attorney General of the State of New York, EDWARD SWANN, as District Attorney of the County of New York, State of New York, and LEWIS NIXON, constituting the Public Service Commission of the State of New York, for the First District, Defendants. | In Equity. Stipulation. |

26651

It is hereby stipulated by and on behalf of the parties to the above cause, that the signatures of witnesses appearing before the Master, to their respective depositions, be waived; and that the filing of the original exhibits in the office of the clerk of the court be also waived.

Dated, New York, December 18, 1919.

SHEARMAN & STERLING,

26652 Solicitors for Complainant.

WILBER W. CHAMBERS,

Solicitor for Defendant, Chas. D. Newton.

WILLIAM P. BURR ( J. O'B.)

Solicitor for Defendant, Edward Swann.

TERENCE FARLEY,

Solicitor for Defendant, Lewis Nixon.

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Adjourned to Tuesday, December 30, 1919, at two P. M.

Last Complainant's Exhibit 411.
Last Defendants' Exhibit AA41.

CONSOLIDATED GAS COMPANY OF NEW YORK vs. NEWTON, ETC., *et al.* 26653

Before ABRAHAM S. GILBERT, Special Master.

NEW YORK, December 30, 1919.

Met pursuant to adjournment.

Present: MR. RANSOM, MR. VILAS and MR. GOETZ, of Counsel for Complainant.
MR. CHAMBERS, of Counsel for defendant Newton.
MR. HAYWARD, MR. CLARK and MR. NEUMANN, of Counsel for Public Service Commission. 26654
MR. O'BRIEN, Counsel for defendant Swann.

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HERBERT W. ALRICH, recalled.

DIRECT-EXAMINATION:

Mr. Ransom: These are corrections of the transcript of testimony which were submitted on behalf of the complainant to each of the defendants, but which were not agreed to by them, or ordered by the Master to be made, and are therefore to be made by recalling the witness whose testimony is affected by them. 26655

By Mr. Ransom:

Q. On page 387 of the printed record, folio 1160, Mr. Alrich, appears the following question and answer: "Q. Up to that time had this plant been used for the production of gas? A. In the winter of 1917-18 we did not use it." Mr. Alrich, do the stenographer's minutes correctly state or report what you said, and if not in what respect?

A. The minutes do not correctly report. My answer was, "In the winter of 1917-18 we did use it."

Q. Mr. Alrich, at page 399 of the printed record, folio 1197, there appears the following question and answer: "Q. How long had they been there, do you know; how many years—the Eagle Pencil Company? A. My recollection is that they put the first coal in there in the fall of 1907." Do the stenographer's minutes which I have just read correctly report what you said, and if not in what respect?

A. The minutes do not correctly report my answer,
26657 my answer having been, "My recollection is that they put the first coal in there in the fall of 1917."

Q. At page 547 of the printed record, folio 1641, there appears the following question and answer: "Q. You sold those on June 4, 1914, didn't you? A. Correct." Do the stenographer's minutes correctly report the question which you answered, and if not in what respect?

Mr. Chambers: I don't see how he can say that the question was not correct. He might correct his answer.

Mr. Ransom: His answer was not to the question as there stated.

26658 The Master: I think perhaps that is a correct criticism. You see the question and answer, do you, Mr. Alrich?

The Witness: I do.

The Master: Is that correctly stated?

The Witness: It is not.

The Master: What is the fact?

The Witness: The fact is that we sold the property on June 4, 1919.

By Mr. Ransom:

Q. As you have elsewhere testified?

A. Correct.

Q. On page 598 of the printed record, folio 1792, appear the following question and answer: "The Master: He has answered as to the Astoria that he knows that is so; as to the New Amsterdam he states that is so. The Witness: I think that is the situation. Mr. Chambers: As to the Standard? The Master: As to the Standard he does not know. The Witness: I think that the Standard can indirectly." You have noted that colloquy, Mr. Alrich, does that correctly state the fact, or is there some confusion between the New Amsterdam and the Standard?

Mr. O'Brien: Are we here to have this wit- 26660
ness testify over again, or to correct an apparent error?

Mr. Ransom: I am asking whether the colloquy as given correctly states what he testified to.

The Master: Does it?

The Witness: It does not.

The Master: In what respect?

The Witness: It conflicts with the testimony on which the questions were based. My testimony on page 596, two pages before, the questions were based on those answers already given by me.

26661

The Master: In what respect?

The Witness: In the question of the Master, the statement of the Master on page 598, "He has answered as to the Astoria that he knows that is so; as to the New Amsterdam he states that is so." That should be, "as to the Standard he states that is so." In other words, it should be "Standard" instead of "New Amsterdam."

Q. The word "Standard" should read "New Amsterdam"?

A. No, the word "New Amsterdam" should read "Standard."

The Master: In the next place, where I said, "as to the Standard he does not know," is that correct?

The Witness: No, that should be New Amsterdam. Referring back to page 596 it will be seen that that should read "New Amsterdam."

The Master: In other words you say it should be this way: "The Master: He has answered as to the Astoria that he knows that is so; as to
26663 the Standard he states that is so. The Witness: I think that is the situation."

The Witness: Yes, sir.

The Master: "As to the New Amsterdam he does not know."

The Witness: Yes. As to the next answer, it should be, "I think the New Amsterdam can, indirectly."

The Master: The next statement ought to read, "I think the New Amsterdam can, indirectly," instead of, "I think that the Standard can indirectly"?

The Witness: Yes, sir.

26664 Q. Mr. Alrich, on page 351 of the printed record, folio 1053, appear the following question and answer: "Q. What have the other companies there generally—if you know—the Standard and the Mutual? A. Their commercial offices. Beyond that I have no knowledge of their activities." Does that question and answer as shown in the printed transcript of the testimony correctly report and state your testimony?

A. It does not.

Q. In what respect?

A. In reading, "Standard," instead of "New Amsterdam." That is, the question was, "What have

the other companies there generally, if you know—the New Amsterdam and the Mutual." I had already previously at the upper part of that page made the correct statement.

Q. On page 352 of the printed record, folio 1055, there appear the following question and answer: "Q. You said the Standard and the Mutual? A. I did." Does that portion of the stenographer's minutes correctly report your testimony in this respect? If not, in what particular is there error?

A. It does not correctly report as a reference to a few lines above will show. I had said the Standard 26666
and New Amsterdam.

Q. So it should read, "You said the Standard and the New Amsterdam?"

A. Correct.

Q. On page 774 of the printed record, folios 2321 and 2322, there appear the following question and answer:

The Master: Before you go to that page, on page 352, folio 1055, where you changed the "Standard and Mutual" to read, "Standard and New Amsterdam"—that is correct?

The Witness: Yes, sir.

The Master: The next question is, "Do you 26667
know how much floor space the Mutual occupies? A. I do not." Is that correct?

The Witness: That is not so clear in my mind. I might have been asked that question.

The Master: The answer would be right to that question, would it?

The Witness: It would be, the answer would be right, the Mutual has some space.

The Master: Would it likewise be right if "New Amsterdam" was substituted for "Mutual"?

The Witness: It would—I didn't know. This question we were correcting is based on the answer I gave just above.

The Master: I think the next two questions relate to the same thing.

The Witness: It may be, but the answers are correct.

Q. On page 774, folios 2321 and 2322 appear the following question and answer: "Q. Do you recall the work done in the same period at the 42nd Street storage station? A. I do." Do the stenographer's
26669 minutes correctly report your testimony in this respect, or if there is error in what respect?

A. The minutes do not correctly report my testimony. My answer was directed to the 44th Street station, the question having been, "Do you recall the work done in the same period at the 44th Street storage station?"

The Master: Yes, I remember, the witness called attention to that the following day, and I said to let it go to the end of the case. I recall that incident very well.

Mr. Ransom: There are a few other corrections in Mr. Alrich's testimony, the testimony
26670 given on December 2nd and 3rd. I sent those to the defendants this morning, but I fear not in time for them to have reached them.

The Master: Let the witness make the corrections.

Q. On page 7830, folio 23,490, the last two lines at the bottom of the page, the word "extending" should be "indicating." Is that correct?

A. That is correct, "indicating the extent of Lot 2, north and south."

Q. On page 7883, folio 23,649, the reference to the complainant company should read, "Complainant's property"—is that correct?

A. That is correct, it should read "Complainant's property."

The Master: Where is that?

The Witness: Right opposite the folio number 23,649.

The Master: Yes, that is apparent.

Q. On page 7893, folio 23,677, is there a correction to be made in the date as given in the tenth line there? Does the tenth line as there transcribed correctly state your testimony as to the date?

A. It does not.

Q. What should that date be? 26672

A. January 1, 1915, as appears just two lines above.

Q. Page 7893, folio 23,678, fourteenth line from the bottom, is there a correction to be made in that line to make it conform to your testimony, the words, "at the end of 1913"?

A. Yes, it should be 1915.

The Master: Where?

The Witness: The question should read at the end of 1914.

The Master: Suppose that question should have been asked just as it is, what would your answer be?

The Witness: My answer would be that it continued in the same use for another year. 26673

The Master: And its use by the complainant company for that purpose was discontinued at the end of 1914?

The Witness: That is correct.

Q. So that from January 1, 1915, on, it was not used by the complainant company?

A. Correct.

Q. Page 7908, folio 23,724, seventh line from the bottom. Does the testimony as there transcribed, correctly state your testimony, or is there a correction to be made?

A. The answer as I gave it was, "It is, except as far as any of it may be upon land now shown tinted on Exhibit 178, or since withdrawn, or"—then I continued the answer down to the bottom of the page.

Q. After the interruption?

A. After the interruption.

Q. Page 7916, folio 23,748, the last line, at the bottom; it reads, "I have that sheet of Exhibit 16." Should that read, "I have Sheet 16 of Exhibit 178"?

A. It should.

Q. Page 7926, folio 23,776, seventh line. Is your
26675 testimony correctly shown by the transcript there given, or should a correction be made in any respect?

A. My testimony is not correctly reported, there having been omitted first an answer.

Q. What answer?

A. The answer "The Consolidated Gas Company."

Q. And then what?

A. Then was omitted a question.

Q. What question?

A. Mr. Chambers' question, "But who did you say owned the land?"

Q. And with those corrections the testimony is correctly given?

26676 A. It is.

Q. The answers are correct?

A. Yes, sir.

Q. Page 7934, folio 23,800, second line. There is a reference there to Lot 14 in the testimony as transcribed. Is that reference to Lot 14?

A. It is not; it is to Lot 47, as is shown at the bottom of the previous page.

Q. And the transcript should be corrected in that respect?

A. It should.

The Master: The statement purporting to appear there is a statement which the stenographer says is by Mr. Chambers.

The Witness: Referring to the bottom of the previous page, you will find it is Lot 47 that we were talking about.

The Master: Yes, all right.

Q. Page 7936, folio 23,807. There is a reference to 124 East 15th Street. Is that the correct number of the property on East 15th Street?

A. It is not; it should be 128 East 15th Street.

Q. And the transcript should be corrected in that respect?

A. It should.

Q. Page 7944, folio 23,832, the ninth line from the 26678
bottom, the word "combination" appears. Does that correctly state your testimony, or is that word incorrectly given?

A. It does not correctly give the testimony.

Q. What should it be?

A. The word was "condemnation." That is, the question was, "Was there any other lot included in the condemnation you have mentioned?" We were discussing a condemnation proceeding.

Q. Page 7949, folio 23,846, sixteenth line from the bottom, there is a reference to "716." Does that correctly state your testimony, or what should be the figure?

26679

A. My answer was, "Yes, you said 1716," as appears from the fourth line above.

Q. "716" should be "1716"?

A. Yes, sir.

Q. Page 7960, folio 23,879, fourteenth line from the bottom, is your testimony correctly shown there in the use of the word "pipe"? If not, in what respect is there error?

A. My testimony is not correctly reported in that line. The word I used was not "pipe," but "part," the answer having been, "In the court value, the

value of the holders as an entirety stands out, but we could not pick out and separate out the parts that we were withdrawing."

Q. Same page, second line from the bottom, the expression is used "I have to estimate." Does that correctly state what you said, or is there error in any respect?

A. It does not correctly report my answer. I used the past tense, the answer having been, "Yes, I had to estimate the value of the property being dismantled and replaced."

26681 Q. Page 7967, folio 23,899, in the fourth line there is a reference to "General Electric." Does that correctly state what you said, or is there error in any respect?

A. The record is not correct. It uses the words "General Electric" instead of "General Ledger," the reference having been to the company's general ledger.

Q. Page 7969, folio 23,906, fifteenth line, the prefix "inner" is used. Is your testimony correctly shown or should there be a correction?

A. It is not correctly reported. My answer was, "No, it is billed to other companies. It is an intercompany adjustment, as it shows."

26682 Mr. Ransom: That is all.

The Master: Any questions?

Mr. Chambers: Yes.

Mr. Ransom: With respect to what?

The Master: I do not know; we will see.

CROSS-EXAMINATION BY MR. CHAMBERS:

Q. Have you the record, Mr. Alrich, at page 387?

A. Yes, sir, I have it here.

Q. Folio 1160. Will you turn to it, please?

A. Yes.

Q. What were you speaking of then?

A. We were speaking about the 14th Street station.

Q. As to whether it was used in 1917 or 1918, in the winter?

A. Yes, and also the use of the plant for government purposes during the war. That was the general subject under inquiry at that time.

Q. The answer you have given now is not correct, is it? It was not used in the winter, was it, in 1917 and 1918?

A. The plant?

Q. Yes.

A. It was.

Q. It was used? 26684

A. It was used.

Q. Wasn't it in the spring, now, of 1917 and 1918?

A. No. My recollection is that we started it up in December, 1917. That is my recollection.

Q. Now, just a minute. Didn't you use it three days?

Mr. Ransom: What do you mean by "you"?

A. No, we used it longer than that. I have not the record before me.

Q. I mean fired it up. You used it three days; your output was a three-day output?

A. I have no recollection that that is the fact.

Q. Well, that is not the fact the way you testify now? 26685

The Master: That is not my recollection. My recollection is that it was fired in December for the first three days in January, 1918.

Q. When were the three days?

A. I have no record before me, Mr. Chambers. I was answering your question there from recollection.

Q. Well, that was my question, whether you used it then. It is not correct when you say you did use it in the winter, if you said you used it three days?

Mr. Ransom: I object to the question as highly improper and argumentative.

The Master: I will not allow that. The fact is as it appears in the record, that it was used for several weeks to fire up, and that gas was produced for only three or four days. That would still be consistent with his answer that it was used in the winter of 1917-1918.

Q. Do you know how many days it was used?

A. I do not.

Q. Or when it was used?

26687 A. No, I do not.

Q. Might it have been in the fall?

A. No, because I can recall in a general way the orders to fire it up in December, 1917. My memory attaches it to around the first week of December, 1917.

Q. How long did it take to fire it up?

A. Why, it takes several weeks to get a plant going.

Q. I mean how long did it take you to fire this up?

A. Well, I was not directly connected with it, so I cannot state. I had the records before me. I did not participate in firing it up.

26688 Q. You are kind of hazy about the use of it, anyway?

A. I do not know that I would undertake to interpret the word "hazy" as you might—

Q. Well, you do not know whether it might have been the spring when they—

A. No, no, I am positive of the time it was fired up; I am not hazy about it.

Q. That was in December?

A. In December, 1917.

Mr. Ransom: They made gas in January; that is the testimony.

The Master: I do not think there is any question about that. The gas was produced for about three days and it cost them thirty odd dollars a thousand.

Mr. Ransom: Not that year.

The Master: What?

Mr. Ransom: That was not the cost that year. The total expenses of that plant divided by the number of cubic feet of make produced the figure.

The Master: I know that. The fact is that if 26690
the gas was produced for only three or four days at that time, in 1918, it cost around thirty dollars a thousand cubic feet.

Mr. Ransom: No, that is not the fact.

The Master: Well, it is a round figure.

Mr. Ransom: No.

By Mr. O'Brien:

Q. Mr. Alrich, have you received any raise in salary since you first testified in this case?

Mr. Ransom: I object to that as incompetent and immaterial, not cross-examination.

The Master: I will let him answer it.

A. I have not. I am glad you raised the ques- 26691
tion.

Q. What bonuses did you and the other employees of the company receive since you last testified?

A. I am not situated to testify in regard to the compensation of the other employees of the company. I have received none. Again I am glad you raised the question.

Q. Do you know whether the other employees have received bonuses?

Mr. Ransom: Objected to as not cross-examination of anything brought out on direct.

The Master: I will allow it.

Mr. Ransom: I object to it.

The Master: I will overrule the objection.

Mr. Ransom: I except.

The Witness: Am I to answer?

The Master: Yes.

A. I know nothing about the compensation received by the other employees of the company who have been connected with this case.

Q. Have you been promised any raise in salary or any bonus since this case began?

Mr. Ransom: I object to it as incompetent and
26692 immaterial, not within the issues of the case.

The Master: I will overrule that.

Mr. Ransom: Exception.

A. I have not, but I wish I had.

Q. Has any intimation been made to you that you might find your condition better later on?

A. There has been none.

Mr. Ransom: If he has read the record he will find it will be worse.

Mr. O'Brien: That is all.

The Master: What else can we do?

Mr. Ransom: I do not know of anything. The situation is that much of the progress that I
26694 had anticipated was not made last Tuesday and Wednesday. Mr. Vilas had to go to Milwaukee, and then Mr. Goetz, who was going on with this work of corrections, was called to Allentown by the critical illness of his mother, then came back to find that his mother's only surviving brother died suddenly, and he had to take charge of the funeral arrangements. That left the matter of corrections in such shape that it could not be proceeded with. He will be back tonight, so we can go ahead with it tomorrow. I doubt whether very much progress could be made this afternoon.

The Master: Is Mr. Carter going to be here?

Mr. Ransom: Mr. Carter, this afternoon?

The Master: Yes.

Mr. Ransom: He will be here after the meeting this afternoon. I do not know what time he will be here, but he was scheduled to come.

The Master: How about Mr. Woods? Could you not have Mr. Woods here to clean his testimony up?

Mr. Ransom: I think it would save time generally by working along in conference. I can start in as soon as we adjourn here and work with 26696
the defendants on the matter of these corrections. I have a few corrections on Colonel Miller here, but they were sent to the defendants this morning and I do not suppose they have had an opportunity to go over them. There are only four or five of them, and without having the witness given a chance to go over them we will make very much more progress.

Mr. Chambers: The situation confronting us is a little different than I anticipated. We expected we were required to go on this Monday, and I expected you would be all through today, and it seems as though our Monday ought to be 26697
extended just a little bit. We do not want to get a lot of witnesses here unnecessarily.

Mr. Ransom: We will go ahead this afternoon with corrections and clean them up.

Mr. Chambers: We have submitted to them 46 questions for them to answer.

The Master: Let me see the record; we will go through it.

Mr. O'Brien: Not knowing we were to take up corrections this afternoon, I have not my copy of the testimony present.

The Master: We will send for the record, and I am going to sit here and correct this record now. Send for your record, Judge Ransom.

Mr. Chambers: We submitted to Judge Ransom 46 questions for Mr. Woods to answer—typewritten.

Mr. Ransom: The most foolish line of questions that the mind of man ever devised.

The Master: You make an application. Your purpose is to recall Mr. Woods for the purpose of answering these questions?

26699 Mr. Chambers: Yes.

The Master: I have before me an application on the part of the Attorney General to recall Mr. Woods for further cross-examination as to 46 questions submitted to counsel, and which I will hand to the stenographer in a minute.

Mr. Chambers: We do not care who answers the questions.

The Master: I do not think this is cross-examination, but you have a right to call witnesses to prove these matters.

Mr. Chambers: You mean we must subpoena all the different officers of the gas company—

26700 bring them down one by one and put the questions to them?

The Master: Why, yes.

Mr. Chambers: We might have to call half a dozen.

The Master: Why, yes, unless Judge Ransom will indicate to you who could best answer these questions. You will probably want to base some argument upon this.

The Master: Yes, I will have Mr. Alrich take the stand and answer such of these questions as he can.

Mr. Ransom: I object to that. What is he being called for? Is he called as a witness for Mr. Chambers?

The Master: Yes, he is being further cross-examined.

Mr. Ransom: Well, that is a very different thing. Is he being cross-examined?

The Master: In my judgment it is really new matter, the answers to which the defendant will be bound by.

26702

HERBERT W. ALRICH recalled.

CROSS-EXAMINATION RESUMED BY MR. CHAMBERS:

Q. Mr. Alrich, you have looked at most of these 46 questions here that I now show you?

A. About half of them.

Q. You looked at the first 14 of them?

A. I did.

Q. Can you give me the answer to the first question?

A. No.

Q. The second question.

26703

Mr. Ransom: This is all over my objection and exception?

The Master: Yes.

The Witness: No.

Q. Can you give me the answer to the second question?

A. No.

Q. Can you give me the answer to the third question?

A. No.

Q. Can you give me the answer to the fourth question?

A. No.

Q. Can you give me the answer to the fifth question?

A. No.

Q. Can you give me the answer to the sixth question?

A. No.

Q. Can you give me the answer to the seventh question?

A. No.

Q. Can you give me the answer to the eighth question?

26705 A. No.

Q. Can you give me the answer to the ninth question?

A. No.

Q. Can you give me the answer to the tenth question?

A. Yes, I can answer it.

Q. I put this question to you: With respect to the Consolidated Gas Company's East 63rd Street holder, where was the boiler and pump house located which was used in connection with this holder prior to 1906?

A. It was on the south side of 63rd Street, just east of the holder about which you inquire.

26706 Q. Can you answer the eleventh question?

A. Yes.

Q. I put this question to you: When was the use of this boiler and pump house discontinued?

A. In 1905.

Mr. Ransom: That is the old one, you mean?

The Witness: The old one.

Q. When was the machinery removed? That is the same East 63rd Street holder boiler and pump house?

A. The machinery was removed in 1905, from the building and placed in a temporary building covered with corrugated iron, and was then removed from there in about 1907.

Q. You do not know what month in 1905, and what month in 1907?

A. No. It would be my memory that it was in the spring of 1905.

Q. And in 1907?

A. In the spring.

Q. When was the building removed from this East 63rd Street holder property?

A. It is my recollection, with no memorandum to refer to, that it was removed in the spring of 1905.

Q. Can you answer the fourteenth question?

A. Yes. 26708

Q. Then I will ask you it: Where is the boiler and pump house now located which is used to heat this holder and to pump gas from same?

A. It is located on the northeast corner of 62nd Street and Avenue A.

Mr. Ransom: This is all over my objection and exception.

The Master: Yes.

Mr. Ransom: Both as to recalling the witness and as to the particular questions put to the witness.

The Master: Yes.

Q. Can you answer the fifteenth question? 26709

A. I can.

Q. Then I will ask you it: Is this pumping station and boiler house owned by the Consolidated Gas Company?

A. No.

Q. It is operated by the Consolidated Gas Company?

Mr. Ransom: I object to it as having been asked and answered at least a half dozen times in this case, three of them at least by this witness.

The Master: Objection overruled.

Mr. Ransom: Exception.

A. It is operated by the Consolidated Gas Company.

Q. Is it leased by the Consolidated Gas Company?

A. I do not know the conditions under which the Consolidated Gas Company uses it.

Q. Who is the owner of it?

A. Its intercorporate relations I do not know.

Q. Who owns it?

A. The Standard Gas Light Company.

Q. Can you answer the eighteenth question?

26711 A. Yes.

Q. I will ask it: Are not instructions in the boiler and pump house issued by the Consolidated Gas Company?

A. Yes.

Q. 19th question?

A. No.

Q. 20th?

A. No.

Q. 21st?

A. Yes.

Q. Is this holder interconnected with the two other holders located to the east and southeast of the Con-

26712 solidated Gas Co. holder?

A. It is.

Q. 22nd?

A. I can.

Q. Was the property between 111th and 112th Street Pleasant Avenue and Avenue A which was taken by the City for a park, ever used for gas purposes?

A. It was.

Q. If so, what was that use?

A. It was a coal gas plant.

Q. How long ago, do you remember?

A. Without any memorandum to refresh my memory, I should say it was dismantled in 1901, or thereabouts.

Q. What buildings or structures were erected upon this property, still speaking of the 111th and 112th Streets, Pleasant Avenue and Avenue A property, taken by the City for a park?

A. I have no memorandum here. I only recall in a general way that there was a retort house, the purifying house and an engine house and a water tank on a steel tower, and several miscellaneous buildings. I haven't a very clear picture of that in my mind. 26714

Q. Well, you are quite satisfied that that generally describes the buildings on that condemned property?

A. It does. It is far from being a complete description of the buildings and apparatus.

Q. Were those buildings, whatever buildings were on there, removed by the complainant company before the City took possession?

A. They were not.

Q. Do you remember, was it about 1901 that the City took possession?

A. Yes, about 1901. The litigation over that was somewhat extended, and the title did not vest, I believe, until the courts had passed upon the award of 26715 the Commissioners.

Mr. Chambers: I move to strike that out. That is a legal question.

Mr. Ransom: This is his own witness, it has nothing to do with this case, and if Mr. Chambers wants to interrogate him about matters that do not relate to this case, he is certainly bound by the answers.

The Master: The motion to strike out is denied.

Q. Was the ground sold to the Merchants Refrigerating Co., in January, 1916, ever used in part or in whole for gas purposes?

A. Yes.

Q. If so, state what the use was and when such use ended?

Mr. Ransom: Objected to as immaterial to any issue in this case.

The Master: Overruled.

Mr. Ransom: Exception.

26717 A. The entire block before the Chelsea improvement consisted of the ground between 16th and 17th Streets, Tenth and Eleventh Avenues, being Block 688 on the Tax Maps, and in the center of the block occupying about the middle third, there were four gas holders and a valve and governor house between the four holders. The westerly end of the block was a coal storage plant with some coal distributing apparatus, and at the easterly end of the block there was a similar equipment, and each of these coal storage yards had a boiler and engine house, brick buildings, where the motive power for the coal handling machinery was provided.

26718 Q. Were any structures used for gas purposes ever erected thereon?

A. Yes. All of the equipment I have just described was a part of the 18th Street Station of the Consolidated Gas Company.

Q. Was the land covered by the 18th Street condemnation taken over by the City in 1901 and 1904, referred to in Sundry Debtors, Blotter 31, page 122, ever used in part or in whole for gas purposes? To what extent was each part of this property used for gas purposes?

A. I cannot answer that without the ledger before me. It is rather blind.

26719

Q. You cannot without—

A. (Interrupting.) It was all a part of the 18th Street station. Without having the ledger before me, I see that it refers to part of the 18th Street station. All of the land taken by the City over there was a part of the gas plant; that is, they took no idle or vacant land.

Q. Whatever they took you say was property used for gas purposes?

A. It was.

Q. Just to make the record complete, I will read the question that you partially answered: Was the land covered by the 18th Street condemnation taken over by the city in 1901 and 1904, referred to in Sundry Debtors, Blotter 311, page 122, ever used in part or in whole for gas purposes? To what extent was each part of this property used for gas purposes?

26720

A. Without undertaking to interpret what is the particular land referred to in the ledger reference, I will say that all land taken by the City at the 18th Street Station for the Chelsea improvement was a part of the 18th Street station of the Consolidated Gas Company and used for gas purposes, and was occupied by structures forming a part of that gas plant.

26721

Q. Which structures you have described as best you can recollect a minute ago?

A. This question would seem to include more land that that. The land taken by them as of January 8, 1901, comprised the two bulkheads, that is the bulkhead from 16th to 17th Streets, from 17th to 18th Streets, and then two irregular blocks that were located between 16th and 17th Streets, Eleventh and Thirteenth Avenue, there being no Twelfth Avenue at that point, and Thirteenth Avenue was not parallel to Eleventh Avenue, they converged, and there were

two irregular areas, and two bulkheads and those two irregular areas of land were taken January 8, 1901.

The Master: They converged right at Gansevoort Market?

The Witness: Just one block below the two lines converged.

The Master: That is about 15th Street?

The Witness: Yes. While the date as of which the issue was tried was January 8, 1901, the city's occupancy of that property did not
26723 take place until May 1st, 1904, the property remaining in the possession and use of the company for those three or four years.

Q. So that the answer to the thirtieth question, "When did such end," would be about 1904?

A. It would be in 1904.

Q. You do not remember what month, do you?

A. Why, it varied as to the different parcels of land. Block 688, the part taken by the City, the company's use ended on May 1, 1904. Another block, 689, that is the block above from 17th to 18th Streets, it ended on September 8, 1904, and so on as you go over the different parcels of land taken there.
26724 There were different dates at which the company's use terminated.

Q. Now, the thirty-first question: "Identify the different parcels and the date they ceased to be used for gas purposes, referring to this 18th Street condemnation, you have covered that fully, have you, as fully as you can?

A. Why no. You are referring now exclusively to land taken by the City, the areas taken by the City.

Q. I assume so, yes.

A. In Block 691, that is between 19th and 20th Streets, just east of Eleventh Avenue, where there was a large 3,000,000 cubic feet holder located, our use of that terminated October 17, 1902. There the termination of the use and the date the title vested coincided.

Q. Any others in between 1901 and 1904?

A. Why, in Block 690 there was a very small triangular area, only about a few thousand square feet taken by the City, and the company's use of that terminated on October 17, 1902. Now, I should say I have covered the date when the company's use for 26726
gas purposes in respect of all land taken by the City for the Chelsea Improvement terminated.

Q. Now, the thirty-second question: What gas structures were erected upon each of these parcels? Can you remember what were on the different parcels?

A. In a general way.

Q. Give it to us, will you, briefly?

A. I have already described what was on Block 688.

Q. Yes.

A. On Block 689, that is between 17th and 18th Streets, Tenth and Eleventh Avenues, there was a 26727
purifier houses that extended entirely across the westerly end of the block, and a large coal storage building entirely across the westerly end of the block, that is fronting along on Eleventh Avenue; then there was a retort house over 400 feet long that was on the south side of 18th Street in the middle of the block; and then there was a two-story brick office building east of the retort house, and there was a condenser house in the middle of the block and some tower scrubbers on the north side of the street, 17th Street; there was a boiler and engine house and the

26728 two-story work shop in which there was machinery for repair purposes, a machine shop, a pipe shop, a carpenter shop, a paint shop; and then there was a building between the coal shed and retort house, in which there were underground tar and ammonia storage tanks and also system of hydraulic elevators for raising the coal cars up to elevated railroads that ran down the length of the building for filling the hoppers of the charging machines; and next to the coal shed there was a brick boiler and engine house. There were other miscellaneous small structures and appar-
26729 atus. Of course, the buildings I have described were complete with gas manufacturing equipment. In Block 690, that is between 18th and 19th Streets, across the easterly end of the block there were two gas holders, and west of those there was a brick boiler house and a separate building, an engine and governor house also of brick; in Block 690, that is between 19th and 20th Streets, there was a 3,000,000 cubic feet gas holder which I have already described as having been taken in the condemnation proceeding and two smaller gas holders; and there were some three or four small frame buildings, valve houses and boiler houses, and there was one brick valve house in connec-
26730 tion with the large gas holder there. On the two small irregular blocks between 11th and 13th Avenues, on the lower one there was a brick scale house and weigh office with two large platform scales arranged for large coal trucks to drive over, and in the upper block there was some tar and ammonia tanks and a brick storage building.

The Master: Does that summarize it all?

The Witness: Yes. I have no memorandum before me. In addition there was other miscellaneous structures and equipment that I have not mentioned.

Q. Can you answer the next question: State in each instance whether they were removed before the City took possession and what became of them. Can you remember that?

A. I can. All of the structures upon the areas taken by the City in condemnation were torn down and demolished by the City.

Q. What became of the gas structures or receivers or whatever was there?

A. All of the structures, machinery, equipment and everything, all property of the company on the land taken by the City, was demolished by the City when 26732 they took the land.

Q. You did not salvage anything? I mean the complainant company did not take over any of the equipment?

A. We had no right to salvage anything upon the property.

Q. I mean did you take any?

A. We did not. We had no right to. We could not if we wanted to.

Q. Can you answer the next question: Was the property sold to the New York Realty & Terminal Co. in January, 1917, ever used in part or in whole for gas purposes? 26733

A. It was. It was used entirely for gas purposes.

Q. Can you answer the next question: If so, state for each parcel the extent of such use and when the use ceased?

Mr. Ransom: This is over my objection of course, allowing the defendants to go into their case at this time.

The Master: Yes.

A. I have already testified to the dates at which the use of Blocks 689 and 690 terminated by the company.

The Master: Are those blocks covered by that question?

The Witness: Yes.

Q. Can you answer the next question: Were gas structures ever erected upon any part of such property; speaking of the property sold to the New York Realty & Terminal Company?

A. There were, and I have just described them a few minutes ago.

Q. What was done with these structures at the time of sale? I suppose what we want to know is whether
26735 they were taken over by the Complainant Company or any part of them, or whether they were retained by the New York Realty & Terminal Company.

A. Whatever structures were upon the property after the date they purchased it, were taken over by them.

Q. Do you recall that you took something off, was there any such thing as that?

A. At the time of the sale we removed nothing.

Q. Was the property between 19th and 20th Streets condemned by the City and taken possession of in 1902 which is covered by the entry in sundry debtors blotter 22, page 594, ever used for gas purposes in part or in
26736 whole?

A. Without undertaking to identify the ledger reference, I will answer that the property was used entirely for gas purposes, the holder having been purged just a few days just before the City took title.

Q. What do you mean by "purged"?

A. The gas was removed and replaced with air.

Q. When did the use of the property condemed by the City between 19th and 20th Streets cease?

The Master: He has already answered that.

Q. In 1902?

A. In general I should say the date title vested, October 17, 1902. We just got the holder purged

and cut off from the street connections in time for the City to take it over on that date.

Q. You say all the property that was condemned there by the City from 19th to 20th Streets, was used for gas purposes?

A. It was. This holder covered almost the entire area of that land.

Q. What became of the holder?

A. The City tore it down and sold it.

Q. Was the property sold to the Warwick-Thompson Company in February, 1910, ever used for gas purposes? 26738

A. It was.

Q. When did such use cease?

A. I have already testified to that date. I haven't a memorandum before me now, but it is my impression it was just prior to the sale of the land to the Warwick-Thompson Company. I have already testified to the date. I answer now subject to whatever my answer was when I testified from a memorandum on December 2nd or 3rd.

Q. Were gas structures erected upon this property sold to the Warwick-Thompson Company?

A. There were, and I described them some fifteen minutes ago. 26739

Q. What was done with the structures on this property?

A. We tore them down just prior to the sale.

Q. You mean by "we" the Consolidated Gas Company?

A. I do.

Q. And removed them?

A. We did.

Q. And salvaged the material?

A. We did.

Q. You did salvage the material, or at least you took over the material?

A. Yes.

Q. Can you answer the 45th question?

A. Only, it should be Block 1704. It reads 1804.

Q. I will ask you—when the easterly end of Block 1704 was sold to the Standard Gas Light Company in 1912, did that company take possession of the structures erected on this property?

A. They did.

Q. Then the 46th question is not to be answered now, or, can you answer that? What was done with such structures?

26741 A. Yes, they were torn down.

Q. Speaking of the Standard Gas Light Company, in that same block, 1704 those were torn down?

A. Yes, by the Standard Gas Light Company.

(Witness excused.)

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ROBERT A. CARTER, recalled.

DIRECT-EXAMINATION BY MR. RANSOM:

Q. Mr. Carter, I call your attention to page 8358 of the printed record, folio 25074, the sixth line of

26742 your answer there, the third sentence in that answer, referring to the property at Fordham Road, "That was owned by an estate, and the block was substantially larger than was required for the company's purposes"—does that answer as transcribed, or that portion of it correctly state your testimony, or should the word "block" be "plot"?

A. It should be "plot."

Q. At page 8366, folio 25096, the last sentence of the answer here reads: "And no appliance is sold or rented by the company for domestic or industrial purposes which has not passed all of those tests as well as

a test upon the district in actual use and actual production." Should the last word in that sentence read "production," or should it read "operation"?

A. It should be "operation."

Q. Page 8370, folio 25108, the first answer on that page, line 10 of that answer reads: "There isn't a big institution that uses gas for illuminating purposes, and still in the average big hotel that 30 or 35 years ago used nothing but gas for illuminating purposes, because they could get nothing else, electricity had not begun to develop in 1884." Should that word "because" to correctly state your testimony, read 26744
"and"?

A. Yes.

The Master: Read it as it should be.

The Witness: "There isn't a big institution that uses gas for illuminating purposes, and still in the average big hotel that 30 or 35 years ago used nothing but gas for illuminating purposes, and they could get nothing else."

The Master: Did Mr. Carter prepare those corrections?

Mr. Ransom: He did.

The Master: Let him read off the corrections he wants to make.

26745

Mr. Ransom: The trouble is this, these corrections were made with the mimeograph copy of the record, and I have very incomplete and almost undecipherable references which I am having difficulty in following myself.

The Master: Let the witness make the corrections with reference to the mimeograph record, and I will direct that the corrections be made in the printed record, having reference to the mimeograph record. Let it be understood that he is now referring to the pages in the mimeograph record.

The Witness: Page 6358, last answer, line 4, strike out "seasonable" and insert in lieu thereof, "seasonal." In the 8th line, after the word "months" insert the words "of it."

At page 6359 last answer, line 3, strike out ".4" and insert in lieu thereof the words "four tenths." The figure .4 in print did not mean much to my thinking.

Mr. O'Brien: Have you the context there?

The Witness: It substitutes "four tenths" for the ".4."

26747 Page 6361, 2nd answer, strike out "of a," and insert in lieu thereof, "per."

Page 6380, 4th answer, the figures should be $616,470.08.

Page 6410, 1st answer, line 10, after the words "cubic feet" insert "sold by the Consolidated Company."

Mr. O'Brien: I am going to object to that.

The Master: The objection is noted. Go ahead.

Mr. O'Brien: I am objecting to the whole thing. Your Honor, we have not been furnished with this.

26748 Mr. Ransom: You have been furnished with the identical thing the witness is reading from.

The Master: Your objection is noted.

Mr. O'Brien: I note an exception to your ruling that this shall be incorporated in this record. We do not know what he is reading from or what the context is. We have not been over this ground.

The Witness: Page 6431, line 3, after the words "once a month by" insert, "a committee of."

Page 6449, 1st line, strike out period after the word "plant," and insert semicolon, and change

the initial letter in the following word "that" from a capital to a small letter; in line 4, make the word "plant" plural "plants."

Page 6458, 6th answer, change "subsequent" to "subsequently."

Page 6490, 1st answer, after the figures "1,625,000," insert the words "for Accounts Receivable."

Page 6496, 2nd answer, strike out the word "efficiency" and insert in lieu thereof the words "deficiency of."

Page 6500, last answer, eliminate the word 26750
"damned" I think that was a slip of the tongue.

Page 6502, last answer, line 4, strike out the word "suspense" and insert in lieu thereof "expense."

Page 6557, 3rd answer, strike out the word "and" and insert in lieu thereof the word "or."

Page 6577, 1st answer, line 3, after the word "would" insert the word "not."

Page 6586, 1st question, transpose, "you suggested I," making it "I suggested you." In the following line, after the word "somebody" insert the word "else."

Page 6594, 2nd answer, after "sometimes" in- 26751
sert "a loan to"; after "one company" insert "is"; make "transfers," "transferred."

Page 6644, last answer, 3rd line, after "sold" insert "has" and strike out the word "increased" and insert in lieu thereof "decreased."

Mr. O'Brien: In some cases you are substituting a negative for a positive.

The Witness: Only in order that it shall make sense.

Mr. Ransom: And to conform to the facts?

The Witness: Yes, sir.

Page 6703, line 2, change "A. E. Gawtry" to "H. E. Gawtry."

Page 6737, last answer, line 3; strike out the word "insurance" and insert in lieu thereof "bookkeeping."

Page 6763, 1st answer line 5, strike out "this company" and insert in lieu thereof "these companies"; last line of same question, insert comma after "company" and after "contract."

Page 6768, 6th line from bottom, after "I should say not," insert "as to."

26753 Page 6774, 1st answer, last line strike out ".3" and insert in lieu thereof "3 10s."

Page 6796, last answer, fourth line from bottom of page strike out the word "debits" and insert in lieu thereof "output"; next line, strike out the word "debits" and insert in lieu thereof "output."

Page 6800, 2nd line, strike out the word "absolute" and insert in lieu thereof "obsolete."

Page 6808, 1st answer, second line, after the words "Mr. O'Brien," add a period. Stike out the words, "or some one."

Page 6845, 1st answer, last line, strike out "I," and insert in lieu thereof "are."

26754

Page 6862, 1st answer, line 5, after the word "that," insert the word "it."

Page 6874, the amount opposite the item "Coke" should be 896.03; and opposite the item "Iron Mass" should be $1,855.07.

Page 6876, 3rd answer, strike out word "could" and insert in lieu thereof "should."

Page 6886, 1st line, after the words "company's income," strike out the word "not," and insert in lieu thereof the word "into."

Page 6887, last answer, line 5, after the word "five" insert "per cent."

Page 6888, last answer, line 4, strike out "coing" and insert in lieu thereof "coin"; line 5, before the word "great" insert "a," and after the word "great" insert "many."

On the same page, 2nd answer, line 1, strike out the words "or during" and insert in lieu thereof the words "as to."

Page 6924, 2nd line, strike out the word "Railroad" and insert in lieu thereof the word "Tax."

Page 6950, last line, "315,802," should be "315,606."

Page 6951, line 1, "7846" should be "70846." 26756

Line 3, "A2755" should be "A2775."

Line 6, 6203, should read 60203.

Page 6954, line 7, strike out the word "being."

Page 6970, line 15, strike out the word "total" and insert in lieu thereof "detail."

Page 6971, first line, strike out the word "total" and insert in lieu thereof "detail."

Page 6999, seventh line, correct spelling of "responsibilities."

Page 7011, line 18, strike out the words "from what," and insert "for all."

Page 6359, last paragraph reads, "1,381,000,000 cubic feet" and should read 26757 "381,000,000 cubic feet."

Page 6360, line 15, reads "1,381,000,000 cubic feet" and should read "381,000,000 cubic feet."

Page 6362, fourth paragraph, line 13, the two last words "per annum" should be stricken out.

Page 6739, line 1, "18,389,835,000" should read "18,389,830,000."

Page 6847, line 19, "Insurance $50,652.56" should read "Insurance $50,662.56."

Page 6874, line 9, "Iron Mass $1,853.07," should be "Iron Mass, $1,855.07."

Page 6911, line 16, the figure $70,570.20" should read "$70,510.20."

Page 6912, line 9, the figures "101,5551.15" should read "$101,551.15."

Page 6955, lines 2 and 3, the figures should be "$4,933,862.12."

Same page, line 5, the figures should be "$371,436.62."

Page 6937, line 21, should read "720,483.57."

Same page, line 23, it should be "604,283.37."

Page 6937A, line 1, should read, "624,193.06."

26759 Same page, line 3, should read "572,348.54."

Same page, line 5, should read "721,080.55."

Same page, line 7, should read, "626,950.94."

Same page, line 10, should read "19,617.93."

Q. You have been over your testimony, Mr. Carter, as contained in the printed transcript and these corrections which you have read into the record should be made to make your transcript conform to the testimony as given by you?

A. Yes, sir.

Q. And to the fact?

A. Yes, sir.

Q. And with these corrections the answers given by

26760 you are true?

A. They are.

Mr. Ransom: That is all.

The Master: Mr. Carter, Mr. Chambers wants the information so long as you have the witnesses here; give it to him. We would just as leave have it here now.

Mr. Ransom: This is not anything with respect to the cross-examination of Mr. Carter.

The Master: I will assume it is not. If Mr. Carter can give us the information let us have it.

By Mr. Chambers:

Q. The first ten (handing witness paper). Can you answer the first one?

A. No, I cannot answer it.

Mr. Ransom: I object to the defendants going into their case at this time.

The Master: The second?

The Witness: No.

Q. The third?

A. No.

Q. The fourth?

A. No.

Q. The fifth? 26762

A. I cannot answer that.

Q. The sixth?

A. I should say as to none of them.

The Master: Down to ten?

The Witness: The question sixth says, as to what holders—

Mr. Chambers: Let me put the question if you think you can answer it.

Mr. Ransom: Do not take my copy away from the witness.

Mr. Chambers: I am not going to take it away from you, Mr. Carter.

The Master: Read the question, Mr. Chambers. 26763

Q. As to what holders owned by the Consolidated Gas Company can it be said that the gas therefrom is sold only to consumers of the Consolidated Gas Company?

Mr. Ransom: I object to the question. I object to them going into their case at this time, as not cross-examination of Mr. Carter.

The Master: I will let Mr. Carter tell us if he knows.

Mr. Ransom: Not by any possibility a question on which Mr. Carter has been interrogated in this case.

The Master: I will take the answer if Mr. Carter can give it.

Mr. Ransom: Exception.

A. I should say that as to none of the holders of any of the companies could it be stated that the gas therefrom was sold only to the customers of the owning company. That is a little broader, but covers the whole situation.

26765 The Master: How about the next one?

Q. How about the seventh?

A. I should say that would be true from 1906.

The Master: Read the question, Mr. Chambers.

Q. If there are any such holders that you have just referred to at present, can the same statement be made for them for the entire period from 1906 to the present time?

A. I should say that my answer to the previous question would apply to the period from 1906 in respect of the holders of all companies.

Q. To the present time?

26766 A. To the present time.

Q. Now, No. 8. If you say you can answer it I will read the question.

A. I think that that question is covered by the other answers.

Mr. Chambers: I will just put it.

The Master: Give that as your answer then.

Q. Is the gas from all of the other holders of the Consolidated Gas Company served to some consumers of companies other than the Consolidated Gas Company?

A. My previous answers cover that question.

Q. And No. 9?

A. The answer is yes, decidedly.

The Master: Read it.

Q. Assuming that the gas holder is low, isn't the gas used to fill that holder taken from any available source and not limited to the Consolidated Gas Company?

A. That would be true whether the holder was low or high.

Q. You answered the tenth.

A. (None.)

Mr. Chambers: I will ask Mr. Alrich if he can tell me the ones that you did not answer here. 26768

The Master: While Mr. Chambers is doing that, Mr. Carter, who could answer these questions that you were not able to answer?

The Witness: I should think Mr. Woods, probably.

The Master: There is nobody else whom you think of, who could answer them, if at all, except Mr. Woods?

The Witness: I should think not.

The Master: Are there any other corrections we can take up this afternoon?

Mr. Ransom: I do not think so.

Mr. Chambers: I do not believe there are any others here he could answer. They relate more to— 26769

The Master: Operation and manufacture.

Mr. Chambers: It looks like Mr. Woods probably could give us the answer.

The Master: Mr. Carter, in answer to my question, which you may not have heard, said that Mr. Woods was probably the only other man that could answer that question.

Mr. Chambers: I think Mr. Woods could clean up all the rest of them.

The Master: How about the defendants' proposed changes?

Mr. Clark: I have a few corrections probably on one page.

The Master: Has not Judge Ransom agreed on them?

Mr. Clark: I have not submitted them, I think most of which—

Mr. Chambers: You have assented to all mine so far.

Mr. O'Brien: We will arrange with Mr. Vilas
26771 to take them up later, your Honor, so far as the defendants are concerned.

The Master: I want that finished by tonight.

Mr. O'Brien: Of course, Mr. Carter I assume was produced for further cross-examination today.

The Master: I have not heard any further questions on cross-examination.

Mr. O'Brien: I have not anything further to ask, except along the lines your Honor shut off, and I am assuming in not going ahead with the cross-examination that your rulings would be the same as when I had him under cross-examina-
26772 tion.

The Master: Your assumption is correct.

Mr. Chambers: Of course, I assumed where you ruled out a question, it is out.

The Master: Sure.

Mr. Chambers: We cannot call him and ask him again.

The Master: Is there anything else we can do this afternoon?

Mr. Ransom: I do not believe so. I will have Mr. Woods and Mr. Teele and all of them here tomorrow morning to clean up on the corrections.

The Master: Are there any more changes that you want to suggest?

Mr. O'Brien: Why, yes, your Honor, I have not gone over with Mr. Vilas at all the changes I want to make.

The Master: Have you a list of them?

Mr. O'Brien: No.

The Master: When will you have that list ready?

Mr. O'Brien: Why, we have not gone into that definitely yet.

The Master: It is going to be definite now. 26774
Have you any?

Mr. Chambers: Well, I am reading late into the night every night. I want to read it all through. We divided it up into three parts.

The Master: I am not going to take any corrections after tomorrow.

Mr. Chambers: We are so busy preparing our case—

The Master: I am going to dispose of all corrections tomorrow morning at 9:30, and anybody who has any corrections in the record better have them here tomorow, when we will have Mr. Teele and Mr. Woods here, and I will not have any cor- 26775
rections after tomorrow. I am going to hear motions to dismiss tomorrow.

Mr. O'Brien: As to that, I want to say this: Since we have begun on the corrections we made every effort to accommodate Mr. Vilas and the complainant, with the understanding that Mr. Vilas would join us in the same spirit and make our corrections.

The Master: I know, but where are they: where are the suggested changes that you want to make?

Mr. O'Brien: Why, that would take considerable time. It was not assumed that we would have to make them after the close of the complainant's case.

Mr. Chambers: What harm would it do if we made them at the close of the case?

The Master: It would not do any harm, except that I want to clean it up.

Mr. Clark: The complainant is in a position of advantage because he can parcel it out to his witnessess and have them clean it up.

26777 The Master: I am going to dispose of all the corrections suggested tomorrow, I am going to hear the motions to dismiss tomorrow, and then we are going ahead on Monday morning. If you have any corrections to make in the record, prepare them between now and Monday morning and show them to Mr. Ransom, if there are any disputed items I will dispose of them before I leave the room.

Mr. Chambers: Suppose he is not through?

The Master: Then I will dispose of them myself.

Mr. Chambers: I do not think there are any
26778 corrections of any moment at all on our part. There are little things, but I wish you would keep it open in case we found anything of any importance, to give us an opportunity before the whole case is closed to mention them.

The Master: I will do that.

Mr. O'Brien: I do not think there will be much controversy, your Honor. It is a question of making an ungrammatical sentence grammatical, that is all.

Mr. Ransom: Oh, no, there are some errors of figures that are consequential.

The Master: From your end.

Mr. Ransom: Yes.

The Master: We have corrected all t[illegible]

Mr. Ransom: I am willing to keep that open for both of us

The Master: I am going as far as we can go tomorrow. I am assuming our record is complete except that between now and the time the case is finally in if any corrections are called to my attention I will correct them. I will correct the record any time.

Adjourned to Wednesday, December 31, 1919, at 9:30 A. M. 26780

Last Complainant's Exhibit 411.

Last Defendants' Exhibit AA41.